International Labour Conference
83rd Session 1996

Report IV (2 A)

Home work

International Labour Office Geneva

CORRIGENDUM

Report IV(2A), Home Work,
International Labour Conference,
83rd session, 1996

(1) On page 18, third line down under Office Commentary, the second sentence should read as follows:

> A large number of governments do not repeat comments on the form the new standards should take, but, of those which do comment, slightly more favour a Convention supplemented by a Recommendation than those which want a Recommendation only or do not favour any instrument.

(2) On page 38, replace lines 12 to 16 with the following:

> (b) A person with employee status does not become a homeworker within the meaning of this Convention simply by performing part of his or her work for the employer in his or her own home.
>
> The intent is not to begin to narrow the definition such that the persons in need of protection are excluded or to weaken protection of non-homeworkers who already have full protection as employees.

International Labour Conference
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Report IV (2 A)

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Fourth item on the agenda

International Labour Office Geneva

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INTRODUCTION

The first discussion of the question of home work took place at the 82nd Session (1995) of the International Labour Conference. Following that discussion, and in accordance with article 39 of the Standing Orders of the Conference, the International Labour Office prepared and communicated to the governments of member States a report[1] containing a proposed Convention and a proposed Recommendation concerning home work, based on the conclusions adopted by the Conference at its 82nd Session.

Governments were invited to send any proposed amendments or comments they might wish to make so as to reach the Office by 30 November 1995 at the latest, or to inform it, by the same date, whether they considered that the proposed texts constituted a satisfactory basis for discussion by the Conference at its 83rd Session (1996).

At the time this report was prepared, the Office had received replies from the following 68 member States: Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Cape Verde, Central African Republic, China, Colombia, Congo, Croatia, Cuba, Cyprus, Czech Republic, Egypt, Estonia, Federal Democratic Republic of Ethiopia, Finland, France, Germany, Greece, Honduras, Hungary, Italy, Japan, Jordan, Kenya, Kuwait, Lebanon, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Mongolia, Myanmar, Netherlands, New Zealand, Nicaragua, Norway, Peru, Philippines, Portugal, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Slovakia, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, United Arab Emirates, United Kingdom, United States, Venezuela, Zimbabwe.

In accordance with article 39, paragraph 6, of the Standing Orders of the Conference, Governments were requested to consult the most representative organizations of employers and workers before finalizing their replies and to indicate which organizations they had consulted.

The governments of 21 member States (Argentina, Bahamas, Belgium, Burkina Faso, Cambodia, Cape Verde, China, Estonia, Finland, Jordan, Kenya, Lebanon, Lithuania, Luxembourg, Mauritius, Mexico, Peru, Romania, Spain, United Arab Emirates, Zimbabwe) stated that the most representative organizations of employers and workers had been consulted.

In the case of 31 countries (Australia, Austria, Barbados, Belgium,[2] Brazil, Canada, Colombia, Croatia, Cyprus, Czech Republic, Egypt, Federal Democratic Republic of Ethiopia, Fiji, France, Germany, Greece, Hungary, India, Italy, Japan, Malaysia, New Zealand, Norway, Portugal, Rwanda, Sweden, Switzerland, Syrian

[1] ILO: *Home work*, Report IV (1), International Labour Conference, 83rd Session, Geneva, 1996.

[2] The Government of Belgium sent, with its reply, an opinion from the National Labour Council (CNT).

Arab Republic, Trinidad and Tobago, United States, Venezuela) the replies of employers' and/or worker' organizations were incorporated into those of the government, appended to the governments' replies or communicated directly to the Office.

To ensure that the English and French texts of the proposed Convention and proposed Recommendation concerning home work are in the hands of the governments before the deadline stipulated in article 39, paragraph 7, of the Standing Orders of the Conference, these texts have already been published in a separate volume, Report IV (2 B), that has been sent to them. The present volume, Report IV (2 A), which has been drawn up on the basis of the replies from governments and from employers' and workers' organizations, contains the essential points of their observations. It is divided into three sections: the first comprises their general observations on the proposed texts, while the second and third sections contain their observations on the proposed Convention and proposed Recommendation, with the Office commentaries on these observations.

REPLIES RECEIVED AND COMMENTARIES

The substance of the replies received with regard to the proposed Convention and the proposed Recommendation concerning home work is given below. The replies are followed, where appropriate, by brief Office commentaries.

The governments of the following 23 member States stated that they had no observations to put forward at the moment or that they considered that the proposed texts constituted a satisfactory basis for discussion at the 83rd Session of the Conference: Barbados, Belgium, Cambodia, Cape Verde, Central African Republic, China, Congo, Cuba, Cyprus, Czech Republic, Federal Democratic Republic of Ethiopia, Jordan, Kenya, Lithuania, Luxembourg, Myanmar, Norway, Qatar, Romania, Saudi Arabia, Senegal, Slovakia, United Arab Emirates. Some of the countries which considered the texts a satisfactory basis for discussion also replied to the questions raised in the Office commentary in Report IV (1).

General observations

ARGENTINA

In the present process of adapting labour legislation to new realities in the social and labour spheres, Argentina will pay special consideration when ratifying new standards to the flexibility of their provisions and to whether or not they are necessary.

AUSTRIA

Association of Austrian Manufacturers (VÖI). Although the Association favours due protective measures for homeworkers, a potential international instrument on home work should only take the form of a Recommendation. The definitions "home work" and "employer" contained in the proposed instruments go beyond the area of protection and would imply a number of additional work activities, as well as financial and administrative constraints placed on certain categories of workers. To avoid any threat to existing and ever-expanding employment opportunities, a legally binding Convention should not be adopted. A few potentially realistic clarifications would not make a Convention any more practicable. The guideline for a possible Recommendation should be the level of protection offered by existing Austrian legislation.

Federal Chamber of Labour (BAK). The adoption of the proposed Convention and Recommendation on home work is very important. Minimum protective standards for homeworkers are long overdue. In the last decade there has been a decline in traditional manual home work, while changes in the nature and organization of work have meant growth in services-related activities which, in Austria, are typically carried out by salaried employees. It is therefore vital that the proposed

instruments retain coverage for services as well as for manual work. Though home work differs from regular work because of the choice of place of work, the need for protection is in most cases no different than that for other wage-earners. Thus, the goal of ensuring equality of treatment between homeworkers and employees in the enterprise is extremely important.

Bangladesh

Regulation of home work is not a priority in the context of deregulation of the labour market. Though homeworkers deserve social protection, any regulatory framework should not diminish their employment opportunities, nor drive home work to the underground economy. The employee-employer relationship should be clearly defined. At the same time, flexibility is needed. In Bangladesh, the implementation of any international standards is likely to affect the expansion of employment opportunities as this would involve an increase in costs. An instrument on home work should take the form of a Recommendation only.

Barbados

Barbados Employers' Confederation (BEC). It is inappropriate and impractical to try to adopt instruments that are relevant only to specific practices in a particular country or set of countries.

Belgium

National Labour Council (CNT). A solution must be found to reconcile the need for effective and flexible instruments to take into account the important economic and social differences between countries, including their systems of industrial relations and levels of economic development. The representatives of the organizations of the Council hold divergent views on how this should be done. The members of the workers' organizations are in agreement that the problem of home work should be regulated by a Convention supplemented by a Recommendation. They feel that a Convention is absolutely necessary to improve the working and living conditions of homeworkers, and point out that the proposed Convention is sufficiently flexible to permit a large number of countries to ratify it. This flexibility is due to the fact that the Convention calls only for the adoption of a national policy to improve the situation of homeworkers, and that the various articles are drafted in such a way as to allow member States enough scope to take their national situation into account in the application of the Convention. The members of the employers' organizations indicate that they could not agree to the proposed texts and that their choice of the form of the instruments would depend on the content and whether or not their concerns about the different provisions were met.

Brazil

National Confederation of Industry (CNI). Regulation of home work is premature and inadequate, not only because of the complexity and diversity of home work, but also because the text of the proposed Convention, given its rigidity and imprecisely

defined basic provisions, is incapable of meeting the main objective of creating new jobs. A Convention would establish an undesired rigidity in the labour market with negative consequences at the social and economic levels, especially in developing countries. Thus a Recommendation only should be adopted, which represents the best way of achieving the protection of homeworkers by aiming to orient research on home work and its impact on employment and development. The text's provisions should be flexible and universal so that they can be applied by member States, irrespective of their level of development.

National Confederation of Commerce (CNC). The CNC reiterates its view that international standards should not regulate working conditions for specific situations, such as home work. If it is nevertheless decided to adopt an instrument on the subject, it should take the form of a Recommendation, which can provide the greatest degree of flexibility. Home work covers various situations which are subject to change and have not been clearly identified. The instrument could soon lose its relevance. It also seems from Report IV (1) that homeworkers are already covered by a variety of other international instruments, including those on basic rights.

General Confederation of Workers (CGT). The CGT hopes that the Government will vote for a Convention supplemented by a Recommendation.

Bulgaria

The Government supports the proposals and is sure that mutual agreement can be reached after the second discussion.

Burkina Faso

The Government states that home work as defined in the proposed Convention plays an insignificant role in Burkina Faso because of the level and structure of the economy. It is also practically overlooked by national law and practice.

Canada

The Goverment supports the adoption of a Convention supplemented by a Recommendation, provided that the Convention contains broad provisions of general principles and the details are put in a Recommendation. This is consistent with the view shared by many member States that ILO Conventions should focus on broad principles and protection which are sufficiently flexible to apply to a wide range of circumstances and conditions throughout the ILO constituency.

Both the Public Service Alliance of Canada (PSAC) and the Ontario District Council of the Union of Needletrades, Industrial and Textile Employees (UNITE) feel that a Convention and Recommendation on home work should be adopted to recognize the vulnerability of homeworkers and to improve their working conditions.

PSAC. Employers in Canada use homeworkers as a low-wage strategy. These homeworkers work for the most part in unregulated conditions, are often easily exploited, and often do not have the same protection as other workers, in part because they belong to the informal sector. As home work increases, so does the number of vulnerable workers. Electronic data processing work at home continues to grow

outside the organized sector. For the labour movement to represent effectively these workers, it must be acknowledged that they are not independent contractors, but must have the right to organize if they so choose.

UNITE. Trends indicate increasing home work with workers prone to abusive working conditions due to the nature of the work and their isolation. Widespread violations of employment standards have been documented; a Convention should thus be adopted to recognize the vulnerability of homeworkers and to improve their working conditions. Though the agreement reached on proposed standards at the International Labour Conference in 1995 is not strong enough in many ways, it is a satisfactory resolution to a difficult issue.

Colombia

The Government maintains the position it adopted during the first discussion — i.e. of not approving, for legal and practical reasons, the proposed Convention and Recommendation. The texts do not add to the rights, benefits or guarantees which Colombian labour law establishes for all workers, or to the mechanisms for ensuring and controlling their effectiveness. Given the present socio-economic conditions in the country, the proposed instruments would, in practice, reduce the employment of homeworkers and restrict the development of micro and family enterprises. Before considering the approval of the proposed instruments, the Government believes it must first observe the experiences of other countries with similar socio-economic conditions to be able to formulate an adequate reply to the problems of home work, and the legal implications.

National Association of Manufacturers (ANDI). If an instrument is to be adopted, it should take the form of a Recommendation. The adoption of a Convention is inconvenient for various reasons: international regulation of home work is premature and inappropriate; it would seriously prejudice job creation; it would hinder the quest for more flexibility in labour contracts and frustrate the advances already achieved; and it is doubtful whether the content, scope and practicability of the proposed instrument would provide vulnerable workers with the level of protection they deserve — but would rather hold back progress.

Cyprus

The Cyprus Employers' and Industrialists' Federation (CEIF) feels that, instead of protecting vulnerable groups of workers, the proposed Convention would regulate all home work carried out by any person, whether an employee or not, at any level — even if he or she only worked at home for a short period or on an irregular basis. The problem is impossible to resolve in the context of a Convention, thus there should be a Recommendation only.

Czech Republic

In view of the lack of legislation on home work at national level and the contradictions in the first discussion about the form international instruments should take, the most widely acceptable solution would be the adoption of a detailed and comprehensive Recommendation. Such a Recommendation would provide guidance

for member States to draft national legislation and directions for employers' and workers' organizations to regulate homeworkers' working conditions. A Convention could be considered later. This approach is more consistent with the discussions in the Governing Body, which are expected to lead to the formulation of criteria for the revision of obsolete Conventions and Recommendations, as well as criteria for the selection of subjects for future standard setting.

Confederation of Industry and Transport. The first discussion made it clear that many member States would have difficulty ratifying the proposed Convention and implementing the proposed Recommendation. The proposed Convention goes beyond the limits within which home work has been understood so far. Rather than protecting a vulnerable group of workers, the text is applicable to virtually everybody who, from time to time, has to work at home. While new forms of work are needed to create new jobs, the proposed Convention would marginalize home work in the labour markets of member States. Thus, there should be a Recommendation only.

Egypt

The Federation of Egyptian Trade Unions (FETU) agrees in principle with the provisions in the proposed Convention and Recommendation and considers them both to be a valid basis for the second discussion.

Federal Democratic Republic of Ethiopia

A Recommendation only should be adopted. A Convention might create difficulties of implementation in different circumstances.

Fiji

The Fiji Trades Union Congress (FTUC) fully supports the adoption of the Convention on home work supplemented by a Recommendation. The proposed Convention will adequately address those forms of labour that appear to be falling outside the scope of basic labour protection. A Convention plus a Recommendation offers the best opportunity for active ILO and member States' policies, including important supervisory mechanisms and technical assistance. The FTUC also agrees that a national policy on home work aimed at improving the situation of homeworkers should be developed in consultation with the most representative employers' and workers' organizations. The national policy on home work will aim at promoting equality of treatment between homeworkers and other wage-earners in a number of fields, including freedom of association, protection against discrimination in employment, statutory social security, minimum age and maternity protection.

Finland

Because of the wide-ranging forms of home work, it is not easy to draft international provisions. A general and flexible Convention on home work plus a supplementary Recommendation are in principle useful to solve problems related to home work, though ratification might be difficult; the goal should thus be a Convention in a form that makes extensive ratification possible. The instruments

should guarantee, as far as possible, rights equal to those of other employees, and member States should promote equal treatment of homeworkers, in particular in relation to the right to organize; protection against occupational discrimination; protection relating to work, health and wages; statutory social security protection; and maternity protection.

Employers' Confederation of Service Industries (LTK) and the Finnish Employers' Confederation (STK). There should be a Recommendation only. The first discussion left unclear the concept of "homeworker", the definition of "employer", the concept of "intermediary", the labour inspection of home work and the obligation to keep registers. If a Convention is adopted, Finland could ratify it only if it was restricted to work performed in an employment relationship. The lack of adequate statistics might also prevent Finland from ratifying a Convention.

Central Organization of Finnish Trade Unions (SAK). The adoption of a Convention and Recommendation on home work is important.

Confederation of Unions for Academic Professions (AKAVA). There should be a Convention and a Recommendation due to an increase in work performed at home by means of automatic data processing.

France

During the first discussion, the Government voted in favour of a Convention supplemented by a Recommendation. To confirm this choice, it will examine this matter within the European Union between now and the 83rd Session of the Conference.

National Council of French Employers (CNPF). The CNPF reiterates its position opposing the adoption of international labour standards on home work. If anything, there should be a Recommendation to provide guidance, especially for developing countries, in the search for and putting into practice of solutions which are adapted to their specific needs and situation. The comments given below are with this position in mind.

French Democratic Confederation of Labour (CFDT). The CFDT favours the adoption of a Convention and a Recommendation given the growing importance of this category of workers in the country. The very flexible text debated in the first discussion should be favourable to ratification.

General Confederation of Labour — Force Ouvrière (CGT-FO). The CGT-FO reaffirms its wish to see the adoption of a Convention supplemented by a Recommendation. It is important to maintain a good definition, as agreed during the first discussion, and ensure that homeworkers who receive work through an intermediary are not excluded from the scope of the instrument.

French Confederation of Executive Staffs (CFE-CGC). The CFE-CGC have nothing to add to the observations made during the first discussion.

Germany

The Government reiterates the position that only a Recommendation should be adopted. To avoid the possibility of adopting a Convention which is liable to be applied in only a few member States, the Conference should opt for a less binding instrument. A Recommendation could initiate a process establishing the same

minimum conditions of employment for homeworkers throughout the world, which is necessary and desirable. The proposed instruments are too detailed and disregard to a large extent the specific characteristics of home work. Adequate account is not taken of the fact that basic legal conditions for home work in many member States differ too widely for harmonization in a Convention. The definition is also too restrictive for a Recommendation on the distinction between homeworkers and independent or self-employed workers, and does not differentiate enough between homeworkers and plant workers. In some States, homeworkers are not employees. It must be clear that any standard adopted by the ILO in this area should cover only homeworkers and not "ordinary" employees. The comments on individual provisions pertaining to a Convention are given only as a precautionary measure and do not mean that the German Government would be in a position to approve the adoption of the Convention at the Conference or ratify one if the comments were followed.

Confederation of German Employers' Associations (BDA). As a fundamental principle, appropriate protection of home work is specifically welcomed, as long as the special and divergent conditions of home work and the specifics of different national legislation are taken into account. However, there can be no full equality of treatment between homeworkers and employees in general because the special characteristics of home work must be maintained. The problem is not lack of legislation on home work, but non-implementation of existing legislation. This is particularly the case where the improvement of the situation of homeworkers would seem most urgently needed — in the so-called informal sector of developing countries. In such cases, only practical support and an appropriate economic environment could lead to the gradual application of legislation. International standards would likely drive more homeworkers into the informal sector, and would be rapidly outdated because home work is developing dynamically and rapidly. While a sufficiently flexible Recommendation is justifiable, a Convention is rejected. It is likely that there would be few ratifications, as with other recently adopted Conventions, and thus adoption would be detrimental to the reputation and make nonsense of the system of ILO standards. Further, at the European level, the European Commission's 1995-97 medium-term Social Action Programme provides for a Recommendation, as opposed to binding instruments such as a Regulation or a Directive. If a binding instrument is not considered appropriate in a comparatively homogeneous European context, it is definitely even less so in the case of an ILO world standard. Since a Convention is opposed, the comments below have only been made on the proposed Recommendation.

German Confederation of Trade Unions (DGB). The DGB supports the texts of the proposed Convention and Recommendation, except for comments made on Article 8 and Paragraphs 15 and 30.

Honduras

Existing national legislation does not contradict future implementation of the proposed instruments once ratified.

Hungary

The Government supports an international instrument to establish rules for home work. However, it does not consider work performed at home as a special labour

relationship but as a separate legal relationship. The application of principles guaranteed for persons in employment relationships is acceptable on condition that work performed at home constitutes a functioning sector of the economy in which several "employees" are employed for a long period of time. Where home work is insignificant, and the employment of persons is accidental and short-lived, it is unreasonable to provide guarantees under labour regulations and, in the case of certain guarantees, such as paid holiday, it is not possible to apply them. Even with these conceptual differences, Hungarian regulations on home work have provisions almost identical to those in the draft instruments. The Government agrees to the Convention. The employers' organizations and employees' organizations believe that it is reasonable to draft rules on work performed at home in the form of a Recommendation.

India

Self-Employed Women's Association (SEWA) and Hind Mazdoor Sabha. After the Rural Workers' Organizations Convention, 1975 (No. 141), this would perhaps be the only other ILO instrument that applies to the unorganized sector. The proposed instruments on home work show a genuine commitment on the part of the ILO and national governments to provide protection to what are essentially unorganized workers — who exist not only in developing countries, but also as an underclass in more industrialized countries. The Convention is extremely flexible and open and its content modest, in that it is restricted to one single obligation: adoption, implementation and review of a national policy without stating it should be a specific policy or integrated into other measures. Each country can formulate its own law and policies to suit national conditions and regulations. Therefore, the instruments should remain a Convention supplemented by a Recommendation.

Italy

The Government supports the adoption of a Convention, supplemented by a Recommendation, though there is concern about the provisions on social security, wages and working time in the Recommendation. It would be a mistake at this point in time to try to regulate and define newly developing forms of work, such as telework — except for telework carried out by employees at their home.

General Confederation of Industry (CONFINDUSTRIA). CONFINDUSTRIA supports a Recommendation only.

Association of Credit Institutions (ASSICREDITO). The international regulation of home work is problematic given its still evolving characteristics in developing and industrialized countries. As far as developing countries are concerned, home work is family-based and varies according to different cultures, social traditions and geographical regions. In industrialized countries, home work is changing at such a rapid pace — and taking new forms such as telework — that it gives rise to considerable legal debate. Given these developments, the changes introduced in the first discussion are not particularly relevant.

Italian General Confederation of Labour (CGIL). The CGIL agrees in principle to the proposed Convention and Recommendation.

Italian General Confederation of Workers in Commerce, Tourism and Services (CONFCOMMERCIO). There is concern about one Convention, supplemented by a Recommendation, giving adequate coverage to so many different situations. There is a risk that the ILO will adopt an unratifiable instrument. CONFCOMMERCIO welcomes a broader reconsideration of all issues related to telework in the second discussion.

Japan

Home work is increasing and represents an important means of income for many workers, the majority of whom are women. It has various forms ranging from conventional industrial work to telework. Because of real and anticipated problems related to home work, it is meaningful to have an international instrument which could be widely used as a basic guideline for home work. It is not appropriate, however, to establish unnecessarily minute and uniform provisions for all member States due to differing domestic circumstances, concepts of home work, situations of homeworkers, measures taken on their behalf and legislation. Therefore, any international instrument in this field should contain sufficiently flexible provisions to allow for policies that meet diverse needs.

Japan Federation of Employers' Associations (NIKKEIREN). Home work provides opportunities to women who are not able to engage in full-time work because of family responsibilities or other reasons, and creates new employment opportunities. It also has expanded from traditional to new forms, such as telework. Since most people engaged in this kind of work are women and since it is mainly done in workers' homes, there are various problems that need to be addressed. Therefore, it is meaningful to discuss and adopt a new international instrument on home work to improve the situation of homeworkers and to ensure fair international competition. However, given the differing stages of industrial and economic development, concepts of home work and applicable laws and measures among member States, it is impossible to have a Convention at this stage. An instrument should be flexible and contain provisions that can apply to the various realities in member States, and therefore take the form of a Recommendation. Comments made below on the proposed Convention should be read as comments on a Recommendation.

Japanese Trade Union Confederation (JTUC-RENGO). The Confederation welcomes a Convention supplemented by a Recommendation. Because home work is increasing in many countries, including Japan, where improvements for home work lag behind those of other workers, it is necessary to adopt international standards to improve the employment and working conditions of homeworkers.

National Confederation of Trade Unions (ZENROREN). Homeworkers must have essential rights and working conditions. Telework must not be used as cheap labour without rights.

Kuwait

While there is no objection to the draft instruments on home work discussed during the 82nd Session of the Conference, the scope of the instruments is not commensurate with Kuwaiti society, which is small and could be negatively affected by allowing this type of work. The lack of administrative dependency between the homeworker and the employer would mean, in practice, the absence of control and

inspection. Increased numbers of workers might resort to it. There is no legal dependency of homeworkers on employers, which would make it subject to labour law in the private sector. Furthermore, national labour law does not stipulate a minimum wage in this sector.

Lebanon

The Government recalls that, in its reply to the questionnaire in Report V (1), it held the view that a Recommendation was adequate for the development of appropriate legislation and regulation on home work. In replying to the questions raised in Report IV (1), which primarily concern the provisions contained in the proposed instruments, it feels that the texts of these two instruments are based on the assumption that the nature of the employer-homeworker relationship is similar, or very close to, that between the employer and worker in the enterprise.

Malaysia

Taken as a whole, the proposed Convention provides the best means of protection to those employed in this type of employment, which is susceptible to economic exploitation by employers. However, Malaysia is not ready to adopt such a Convention, as it would take away the flexibility which is the basis on which home work operates and hamper the economic development of the country. The provisions on freedom to organize and to bargain collectively are not consistent with the policy and system of industrial relations in Malaysia. Homeworkers generally do not regard themselves as employees, since they only aim to supplement family income; this opportunity could therefore be jeopardized.

Malaysian Employers' Federation (MEF). International regulation of home work is premature and inappropriate. The Convention would be difficult to implement and jeopardize job creation and entrepreneurship. Furthermore, premature regulation would drive existing home work underground and hold back progress and national efforts to eliminate unemployment. While the Federation is sympathetic to the need to protect the most vulnerable group of workers, the Convention could not achieve the appropriate level of protection due to the content, scope and practicability of the instrument. The problems are insurmountable in the context of a legally binding Convention, thus the MEF could support only a Recommendation.

Mauritius

The implementation of the proposed Convention would be difficult in relation to, among others, enforcement of provisions such as hours of work and leave privileges, and accessibility to private premises for the purposes of inspection. The benefits deriving from such an instrument are doubtful when enforcement has no powerful means to be effective.

Mexico

Home work may be seen as another alternative for generating job opportunities. However, this form of work should not violate labour rights. Mexican labour law

regulates home work with the principal intention of avoiding unfavourable working conditions for those concerned, but it does not contain provisions similar to those in the proposed Convention relating to the autonomy and economic independence necessary to be considered a homeworker. The major part of home work in Mexico is in the informal sector and it seems that no organizations of employers and homeworkers have yet been formed. Given the rapid growth of home work, it is vital that there should be improved international standards in this area. The instrument should take the form of a Recommendation, which can be better adapted to national circumstances. The text of the instrument should be moderate in its approach and allow home work to develop, which is a means of generating employment; as such, it might contribute to economic development in some regions of the world.

Mongolia

The Government supports the adoption of the proposed Convention and Recommendation on home work.

New Zealand

The Government opposes the introduction of instruments concerning particular sectors such as home work. Rather, employees should be covered by the same employment framework, and a plethora of separate sectoral arrangements should be avoided. In New Zealand, homeworkers are included in the definition of employee under the law establishing the framework for the industrial relations system. The Government reiterates its position in Report V (2) on the provisions of the proposed instruments.

New Zealand Council of Trade Unions (NZCTU). The NZCTU supports the introduction of instruments on home work because simply applying generic labour protection to homeworkers without regard to their unique circumstances would, in many cases, fail to adequately secure basic workers' rights. It supports the general approach in the proposed instruments, which promotes the removal of disadvantages while leaving open the methods of achieving this outcome.

Norway

Confederation of Norwegian Business and Industry (NHO). The conclusions of the first discussion of the Committee on Home Work are unacceptable. The NHO has no objections to the need of protecting the most vulnerable groups of workers, but NHO opposes discussing a Convention which goes beyond industrial home work to broader undefined areas, such as telework. The proposals as they stand are unlikely be adopted by the countries with the most vulnerable groups of workers or will drive existing home work underground. At the same time, progress and national efforts to decrease unemployment with the help of new fields, such as telework, will be held back. With the current broad definition of home work, NHO can only work toward a Recommendation. There are also grave concerns about the definitions of homeworker, employer and intermediary; safety inspectors intruding into private homes; and the bureaucracy and additional administrative costs concerning the development and maintenance of the proposed register.

Norwegian Confederation of Trade Unions (LO). There is general satisfaction with the draft Convention and Recommendation. Countries have a reasonable degree of freedom to find practical solutions for implementation in legislation and agreements, and the emphasis on cooperation with the social partners is consistent with Norwegian traditions and practice. The instruments specify that homeworkers should not be discriminated against or given advantages in any fields compared to other workers. They will thus contribute to raising the status and dignity of homeworkers by securing them fundamental workers' rights, by imposing on employers their legitimate responsibilities and obligations, and by committing authorities to treating homeworkers as workers. The requirements are not distinct from Norwegian legislation and/or agreements. The LO suggests that a new provision be added to the Recommendation which requires employers to have general meetings with homeworkers at least once a year to receive information on items such as product development, production methods, and work prospects, as well as to allow for sharing of experiences.

Philippines

The Government supports the adoption of the proposals for a Convention and Recommendation embodied in Report IV (1), except for reservations noted under the specific provisions. The international policy designed to improve the situation of homeworkers as proposed in the draft instruments bolsters current policy directions in the Philippines.

Portugal

The Government confirms its interest in adopting a Convention supplemented by a Recommendation, as long as they are flexible enough to ensure wide ratification. It is only through the adoption of a balanced Convention on home work that it will be possible to ensure that international labour standards fulfil their function of improving the situation of the most vulnerable workers.

Confederation of Portuguese Industry (CIP). The CIP opposes the adoption of a Convention because it could not be implemented without serious consequences for the creation of employment and business management. Although it agrees that these workers, who are the most vulnerable in society, need protection, it has serious reservations as to the content and scope of the instruments and their ability to confer the required level of protection. The CIP would not totally object to the adoption of a Recommendation, provided it is flexible and adapted to reality.

General Union of Workers (UGT). The UGT believes there should be a Convention supplemented by a Recommendation, which would provide a better opportunity for the ILO and its member States to implement active policies, as well as mechanisms for tripartite supervision and technical assistance. The proposed Convention is still very modest and restricted to only one obligation, which is the adoption, implementation and review of a national policy, without being explicit whether it should be a special policy or one that is integrated in other measures. While the general objective of the policy is stated, there is ample freedom for governments to apply it in a manner adapted to national traditions and circumstances. The UGT submitted a long list of amendments to the proposed instruments, which it was not

possible to include in this report. The Office suggests that they be submitted to the Workers' group of the Committee on Home Work during the second discussion for decision as to the action to be taken on them.

QATAR

There is no legislation on home work since it is not practised. However, the proposed instruments would assure legal protection for homeworkers and thus serve as a sufficient basis for discussion.

RWANDA

Association of Employers of Rwanda (AER). It is too early to establish international standards on home work because of the uncontrollable parameters, such as the distinction between homeworker and independent worker and the absence of national statistics on home work. It is desirable to first establish national legislation in this area before considering ratification of a Convention.

SWEDEN

The Swedish ILO Committee supports the underlying purpose of the decision to put the subject of home work on the agenda of the International Labour Conference, namely to take necessary measures to improve conditions for homeworkers and to ensure that they enjoy equality of treatment in relation to other employees. However, a special Convention on home work is not the best method for achieving this purpose. Because homeworkers come within the scope of general ILO instruments, homeworkers as a group should receive special attention by the ILO and, at national level, in the supervision of compliance with the general instruments. Within the framework of the ILO's advisory activities and technical cooperation, a special programme should be devoted to the situation of homeworkers. Homeworkers in Sweden are normally regarded as employees thus, with certain exceptions, labour legislation applies to them. Home work includes cottage industries, childminding and telework.

The Swedish Employers' Confederation (SAF) and Federation of Swedish County Councils reiterate that there is no need for a special instrument on home work. Instead, the ILO should concentrate efforts on inducing more countries to ratify and give effect to existing instruments which already include home work. With the scope of the proposed instruments, there is a danger of its development, both in industry and in the community at large, being inhibited.

SAF. If an instrument is to be adopted, it should be a Recommendation only.

Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO). In the first instance, a Convention should regulate minimum conditions for homeworkers. In reports on measures to give effect to ILO Conventions, member States should give an account of the situation for homeworkers.

TCO. The proposed instruments allow member States a reasonable degree of liberty in devising practical solutions through legislation and/or collective agreements, while providing that homeworkers are not to suffer discrimination

compared with other employees. The Convention aims to enhance the status and value of homeworkers by securing their basic rights as employees, by imposing fair responsibilities and obligations on employers, and by requiring public authorities to treat homeworkers as employees. This implies a demand for national policy development, statistics, control, inspection and the like. The obligations and responsibilities are reasonable, and do not differ from what is implied by Swedish law and/or collective agreements.

Switzerland

The Central Union of Swiss Employers' Associations (UCAPS) considers international regulation of home work premature and inappropriate.

The Swiss Machine Industry Employers' Association (ASM) and Swiss Clothing Industry Association (Swissfashion) oppose the adoption of a Convention on home work and have a reserved attitude to the proposed Recommendation.

ASM. The proposed instruments are disappointing and still resemble a shopping list. They are far too regulatory, are counterproductive to their objective and will hinder home work, rather than encourage it. This is regrettable considering current problems of unemployment.

Employers' Convention of Swiss Watchmakers (CP). Not all countries would strictly implement the provisions. The proposed Recommendation is far too detailed, which discourages its application. If international instruments on home work are meant to eliminate the distortions in competition between countries with extensive social protection and those without any, this is certainly not the way to do it.

Swissfashion. The Swiss home work law is detailed and flexible, and is based on the idea that home work should not be discouraged by exaggerated prescriptions that impose an administrative burden and disproportionate costs on employers. The proposed instruments are in contradiction to this idea and contribute nothing to "improving the situation of homeworkers", which is the aim of Article 3.

Swiss Federation of Trade Unions (USS) and Federation of Swiss Societies of Salaried Employees (VSA). Given that telework at home is becoming increasingly common worldwide, it is essential to adopt a binding ILO Convention dealing with home work that has a comprehensive definition covering the widest possible range of services. The number of homeworkers is rising, with unprotected telework being carried out by an increasingly high proportion of women. Unprotected working conditions are also becoming more widespread in a variety of branches of work. A Convention could forestall this steady growth in casual employment conditions. The adoption of a practicable Convention could be used as a basis for reforming Swiss laws and regulations.

Syrian Arab Republic

Chamber of Industry. There are no reservations to the text of the proposed Convention. It includes an acceptable definition of home work. Articles containing general provisions to improve the status of home work, providing equality with other workers in the same profession, and providing protection in the field of wages, safety and health, and minimum age, are generally compatible with Syrian legislation. The Recommendation, however, places many obligations on the competent authority and

employers, which are difficult to comply with, such as provisions on registers and record-keeping. Specific comments are made under the relevant Paragraphs of the Recommendation.

Trinidad and Tobago

There is no aspect of the subject which touches upon the service of government or quasi-government bodies.

United Kingdom

Working arrangements are best left to employers and workers to determine in light of their particular circumstances. As a result, the United Kingdom has a wide range of working patterns to suit individual needs and a relatively high proportion of the population is in employment. Measures already exist which help promote good practice in the use of home work and telework. Specific detailed international labour instruments on home work would be inappropriate and likely to result in an unacceptable burden on employers, thus discouraging this form of work which has advantages for employers and employees and wider economic benefits. If there is to be an instrument, it should be a Recommendation offering broad guidelines only and recognizing that member States need to take different approaches according to their individual circumstances.

Confederation of British Industry (CBI). A Convention on home work would be premature and inappropriate. There are no alternative forms of wording which would be workable or capable of implementation and enforcement without doing serious damage to job creation and entrepreneurship. Early regulation will drive existing home work underground, and hold back progress on new forms of home work and national efforts to eliminate unemployment, which were reconfirmed at the World Summit in Copenhagen, March 1995. Further, a Convention would send the wrong signals in view of the criticism of ILO standard-setting procedures and steps taken toward reform. Finally, CBI is sympathetic to protecting the most vulnerable groups of workers, but the proposed Convention would not accomplish this, especially due to the definitions of homeworker and employer, the lack of definition of intermediary, and the inspection and registration provisions. While no instrument is preferable, CBI could work towards a Recommendation.

United States

United States Council for International Business (USCIB). It is impractical and counterproductive to establish a binding ILO Convention on home work because of the vast differences in the forms of home work and in economic development within the ILO membership. The consequences of new forms that are technologically enabled cannot yet be assessed. Regulation of home work is also premature, because it is not sufficiently understood or quantified. It is too soon to know what regulatory mechanisms might be appropriate for modern forms of home work, which are dynamic and constantly changing. Comprehensive regulation of this dynamic part of the world and domestic economies will be counterproductive to meeting the preferences of workers, job-creation, a rising standard of living for workers, business

growth and competitiveness. The decision to have a home work Convention should be reversed, especially one that regulates modern forms of home work. Only a Recommendation is appropriate.

VENEZUELA

The Government feels that national legislation covers homeworkers. The main difference between the proposed Convention and national legislation lies in its approach.

Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS). The Federation reiterates its opposition to the adoption of a Convention on home work because it is premature and inappropriate, but could consider a Recommendation which offers sufficient flexibility and is adapted to the special characteristics of home work in countries such as Venezuela. The proposed Convention regulates home work more than is necessary. Instead of providing protection to the most vulnerable, it extends the scope to include even those who work only occasionally at home. The implementation and maintenance of a series of controls will result in an important burden and administrative costs for governments, which have other priorities in their national budgets.

OFFICE COMMENTARY

The general observations reiterate many of the views on the adoption of international labour standards on home work expressed during the first discussion. A large number of governments fail to comment again on the form the new standards should take, but, of those which have, slightly more favour a Convention supplemented by a Recommendation than those which want a Recommendation only or do not favour any instrument. One government which previously favoured a Recommendation only, said it now favours both a Convention and Recommendation provided that the Convention contains broad provisions of general principles and the details are put in a Recommendation. Several Governments state a similar view that ILO Conventions should focus on broad principles which are sufficiently flexible to apply to a wide range of circumstances and conditions throughout the ILO constituency, especially given the wide-ranging forms of home work and various approaches to regulation. A few governments think that the subject is irrelevant in their countries or that the instruments would present difficult problems of implementation. Others are particularly concerned about the impact regulation on home work as provided for in the proposed new standards might have on job-creation, and fear home work will be lost as an opportunity for employment or be driven underground.

Workers' organizations maintain the importance of adopting a Convention and Recommendation and argue that government concerns are met: the Convention is flexible and modest in that it is restricted to the obligation to adopt, implement and review a national policy, without saying it should be a specific policy or integrated into other broader policies. Further, they argue, each country can formulate its own law and policies to suit national conditions and regulations, while providing that homeworkers are not to suffer discrimination compared with other employees, nor have special advantages. In their view, a binding Convention which entails ILO

supervisory machinery will enhance the status and value of homeworkers by securing their basic rights as workers and by imposing fair responsibility and obligations on employers. Some workers' organizations and governments emphasize the importance of protecting new forms of home work, such as telework, especially since it is being carried out by an increasingly high proportion of women and growing outside the organized sector. Some governments and many employers' organizations, however, believe international regulation of new forms of home work is premature and will impede their development.

For the most part, employers' organizations believe that the first discussion did not produce satisfactory results and that an acceptable Convention is unachievable because it is impossible to write a definition of home work wide enough to cover the groups that need protection but not so broad as to encompass workers who are really independent, who only occasionally do home work, or who in the course of their main work take work home or otherwise work away from the workplace. There are also assertions that the definition of employer does not sufficiently distinguish employers from clients, and that intermediary is not adequately defined. Other employers' organizations state that the proposals are not likely to be adopted by the countries with the most vulnerable groups of workers or will probably drive existing home work underground. Several employers' organizations have no objection to protecting the most vulnerable groups of workers but believe this protection should not be in a binding instrument. Many feel a sufficiently flexible Recommendation would be acceptable as long as it is adapted to reality and does not create too much of a bureaucracy with registration, reporting and record-keeping requirements. One Government and employers' organization state that the ILO should concentrate efforts on inducing more countries to ratify and give effect to existing instruments which already include home work.

Observations on the proposed Convention concerning home work[1]

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 83rd Session on 4 June 1996,

Having decided upon the adoption of certain proposals with regard to home work, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this day of June of the year one thousand nine hundred and ninety-six the following Convention, which may be cited as the Home Work Convention, 1996:

Observation on the Preamble

Sweden. See comments under Article 10.

[1] The observations are preceded by the relevant texts as given in the proposed Convention set out in Report IV (1).

Article 1

For the purposes of this Convention:

(a) the term "home work" means work carried out by a person, to be referred to as a homeworker,

(i) in his or her home or in other premises of his or her own choice, other than the workplace of the employer;

(ii) for remuneration;

(iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used,

as long as this person does not have the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

(b) the term "employer" means a person, natural or legal, who, either directly or through an intermediary, gives out home work.

Observations on Article 1

Australia. Subparagraph (a): The Government would have preferred the words "as long as this person is an employee as defined under national laws, regulations or court decisions", but the definition resulting after the first discussion accommodates the concern that independent contractors clearly be excluded. The Office clarifies this and economic dependence on pages 3 and 4 of Report IV (1). The Government opposes additional criterion on employing assistants as an unnecessary level of complication. Subparagraph (b): The Government supports the Office's alternative definition, including dropping reference to intermediary, but suggests adding language such as "in pursuance of his or her business activity or in the provision of services to the public ..." to take account of activities in the public and non-profit sectors.

Australian Chamber of Commerce and Industry (ACCI). Subparagraph (a): The definition is not sufficient to exclude genuinely independent workers and workers who work from home on an irregular basis. The intent is to protect workers who are subject to control and direction, thus such terminology is more acceptable to autonomy and economic independence; the financial position of a worker should not determine classification. Concerning language on place of work, the following is more appropriate: "predominantly in any premises of his or her own choice (whether home or not), other than the workplace of the employer". Adding a further criterion on employing assistants would further confuse the distinction between employee and independent worker. Subparagraph (b): The proposed alternative definition is an improvement, as it more clearly distinguishes between a commercial contract and a labour contract. However, the definition still gives rise to confusion when read in conjunction with the definition of a homeworker. The following is suggested: "The term 'employer' means a person, natural or legal who, in pursuance of his or her business activity, gives out or causes home work to be given out to another person who is under their direction and control as to how that home work is to be performed".

Australian Council of Trade Unions (ACTU). Subparagraph (a): The phrase "of his or her own choice" should be deleted. There should be no implication that homeworkers are not employees in an employment relationship equal to that of other employees, and homeworkers would not necessarily be able to work in any premises

of their choice. The Council is opposed to adding criterion on employing assistants; assistance from family members should not defeat homeworker status. Subparagraph (b): The ACTU supports the alternative definition without the phrase "in pursuance of his or her business activity" because it could preclude activities, such as public administration, that are not directly related to profit.

Austria. Subparagraph (a): An additional criterion is unnecessary. Subparagraph (b): The Government supports the text but not the alternative.

Austrian Chamber of Commerce (WKÖ). Austrian legislation only deals with certain home work. Employees working at home (teleworkers) are not subject to any legal regulation. These new employment sectors are regulated by individual agreements (contracts for work) and should not be hindered or destroyed by legislation.

BAK. Subparagraph (a): It is left to national standards to distinguish between independent and dependent work, although the provision sets out as criteria the degree of autonomy and economic independence. But the capacity to employ assistants is indicative of this autonomy. An additional criterion is therefore unnecessary. Concern for preventing child or other unpaid labour could be done through alternative precautions, such as monitoring output in relation to the corresponding unit of time. Subparagraph (b): BAK opposes the proposed alternative. It agrees with the Office that there is no risk that the concept of employer could be interpreted to include dealings between the employer and his or her business clients, but is concerned that the proposed alternative could restrict the giving out of services. It would not cover employers who, according to national law, pursue no business activity or who, outside of their business activity, are involved in other activities during the course of which they give out home work.

Bahamas. Subparagraph (a): The Government supports adding "does not employ other persons to assist him or her". It would give further clarification to the definition and help to distinguish a homeworker from a self-employed person operating from home. Subparagraph (b): The phrase "or causes home work to be given out" is preferable.

Barbados. BEC. (a) This would require that a person's status as an employee or self-employed be determined before they may be deemed a homeworker. Working at home without direct supervision and ability to determine working time means the person is self-employed. People who "telecommute" — work at home and at the office — would be employees under a contract of employment.

Belgium. Subparagraph (a): The Government opposes adding another criterion. Subparagraph (b): The proposed alternative definition is acceptable.

CNT. Subparagraph (a): The definition needs to be more precise. The distinction between homeworkers and independent workers is not sufficiently clear, and the criteria of "necessary autonomy" and "economic independence" may not correspond to legal systems of the different member States. Furthermore, the international instruments should be limited to those workers who regularly work at home, and this should be clearly stated in the definition. Subparagraph (b): This definition is very different from how employers are usually defined in national law. Member States should be given sufficient margin to refine the definitions within the framework of national policy and in agreement with the social partners. The different alternatives

proposed should be closely examined in the global context of the instrument during the second discussion.

Brazil. Subparagraph (a): The phrase "in other premises of his or her own choice" does not reflect reality, as many homeworkers do not have a real choice. It should be replaced by "in other similar premises". The Government is opposed to an additional criterion as it would exclude homeworkers who are helped by family members. The word "employ" would have to be further qualified as meaning "employ, as an employee," to make it clearer. Subparagraph (b): The Government is opposed to an alternative definition because it would limit the definition of employer and would exclude agents or subcontractors, who may be considered as intermediaries — but for homeworkers they are employers. Instead, the term "employer" should be defined as "a person, natural or legal, who gives out home work as defined under subparagraph (a) above".

CNI. The definitions are confused and ambiguous. Subparagraph (a): A distinction must be made between genuine homeworkers and those who irregularly work at home. The criteria of autonomy and economic independence are neither sufficient, nor strong enough, to provide this distinction because many really independent workers do not possess autonomy with regard to specifications and delays to complete the work, nor are they economically independent, i.e. their business depends on clients. The definition should make clear that home work results from an employment relationship as follows: "(a) the term "home work" means all work, not of an irregular nature, which a person carries out for remuneration in his or her home, or in premises of his or her choice, which results in a product or a service in the context of the business of an enterprise, under the subordination of an employer and according to specifications, instructions and orders of the latter, irrespective of who provides the equipment, materials or other inputs". Subparagraph (b): This definition can lead to confusion between the employer and a client. It should read: "(b) the term 'employer' means a person, natural or legal, who assumes directly and permanently the risks of the economic activity, and accepts, pays for and directs the personal work of the homeworker". Add a new subparagraph: "(c) the term 'homeworker' means a natural person who, for remuneration, carries out home work on a regular basis, under the subordination and direction of an employer".

CNC. Subparagraph (b): Delete the reference to an intermediary. The relationship between the employer and the homeworker should be direct.

CGT. Agreed. Subparagraph (a): Insert the word "free" before "choice". Do not add another criterion. Homeworkers who get help from others should still be considered as homeworkers. Subparagraph (b): Employers and intermediaries should be jointly responsible for the rights of the homeworker.

Bulgaria. Subparagraph (a): When "home work" is defined, a definition of the contracting parties could be suggested as the specifying of their rights and obligations under the contract to be facilitated. National law distinguishes employment and civil contracts, the latter being more free in terms of fee paid and relation between the parties. With home work, the employer provides the homeworker with all the materials and tools and the work is carried out at home. Homeworkers are considered as employed workers under national legislation, since independent workers are only those who work on their own, manage their activities and "provide" work to other independent persons.

Burkina Faso. Subparagraph (a) (iii): This part of the definition is very complex and the criteria of autonomy and economic independence are not defined. Replace this clause by "as long as this person does not consider himself or herself as his or her own employer".

Canada. The reference to intermediary in the text may require amendments to federal and provincial law if the term is applied to a situation where a subcontractor accepts work from several manufacturers and distributes it to homeworkers. To conform to the latter, changes may be needed to make manufacturers liable for commitments that their contractors make towards the latter's employees. Subparagraph (a): Agreed. The definition is helpful to distinguish a person who is a homeworker from a person who is not. The intention to distinguish homeworkers from independent or self-employed workers is not contrary to the current state of Canadian law; the tests used to determine whether a person is an employee would likely result in such a distinction being made. While the proposed definition is necessary to set the context, it is assumed that the Convention does not require member States to adopt such definitions in their legislation. Such a requirement could become an obstacle to ratification. The addition of a criterion on employing assistants in the last part of subparagraph (a) would be helpful to define who is not a homeworker and, with the existing wording on autonomy and economic independence, is consistent with the approach in Canadian law that, to be deemed an employee, a person must not have the power to hire or fire another employee or have control over the means of production. Subparagraph (b): The Government prefers the alternative definition. The general intent of this clause, to clarify that only persons pursuing business activities when they give out home work are employers, would be in keeping with the notions of chance of profit and risk of loss. The alternative could also be more useful to clarify which of several persons is the employee's employer for the purpose at hand.

Canadian Employers' Council (CEC). Subparagraph (a): The definition is crucial because it determines the specific and different treatment that will be required for homeworkers beyond that envisaged for the general employee population. It does not provide satisfactory criteria to make distinctions between independent workers and homeworkers and between people who work at home on an irregular basis and those who spend the majority of their time on home work. The latter is particularly important for the new forms of mobile and telework that are associated with jobs in the emerging network-centric environment. If the phrase on choice in (i) means that there is autonomy to choose to work at home as a core criterion to determine who is included, it is inconsistent with having autonomy as a factor determining who is excluded. Subparagraph (b): It is the first time a formal definition is given of "employer" in a Convention and one would assume that any definition of employer would include having employees, but it includes a range of people whose employment status is questionable and excludes the normal employment contract relationship. It is insufficient, misleading and impractical.

PSAC. Subparagraph (a): To give proper recognition to the pyramid type of structures built by some companies to avoid their "employer responsibility", the reference to intermediary should be reintroduced in (iii).

UNITE. Subparagraph (a): The definition should be maintained as adopted by the Conference in June 1995. Subparagraph (b): Reference should be made to arrangements where there are a number of contractors and subcontractors sending out

work to ensure that workers receiving work under these arrangements are not excluded from the Convention. Reword the alternative definition as follows: ". . . who gives out home work or causes home work to be given out in pursuance of his or her business activity".

Colombia. ANDI. Subparagraph (a): This definition embraces more than it should. The criteria of autonomy and economic independence are not sufficiently clear to distinguish between homeworkers and truly independent workers. It is not evident that homeworkers are always employees. There is no criterion concerning the time spent in home work. Persons who occasionally take work home would be classified as homeworkers. Employers would have to register them as such and details concerning such work would be subject to review by the competent authorities. Subparagraph (b): This definition could lead to ambiguous situations where no distinction is made between commercial contracts and labour contracts and between employers and homeworkers.

Congo. Subparagraph (a): Supports adding the suggested criterion on employing assistants. It will help clarify the distinction between a homeworker and independent worker. Subparagraph (b): Supports alternative definition suggested by the Office.

Croatia. Subparagraph (a): Supports adding another criterion at the end of the clause on employing assistants because, according to national law, independent work is a substantial element of employment. Subparagraph (b): Opposes alternative definition. The distinction between homeworkers and independent workers is already explicitly stated in the definition of home work. No further distinction is necessary for independent workers who are provided with work by clients — who give out work for their personal use and thus do not enter into employment with the homeworker.

Cyprus. Subparagraph (a): The Government agrees to adding another criterion on employing assistants, as it will make the distinction between homeworkers and independent workers clearer. Subparagraph (b): Agrees to alternative definition suggested by the Office for reasons stated in the Office Commentary in Report IV (1).

CEIF. The term "intermediary" should be defined since it is used throughout the instrument. In some cases, there may be many levels of intermediaries between the homeworker and the employer, such that the homeworker may consider those who allocate the work and specify how it is to be carried out to be the employer. Some employees with supervisory duties might even end up being liable for the financial prudence of their employer. Subparagraph (a): The degree of autonomy and economic independence are not sufficient criteria for distinguishing homeworkers from genuinely independent workers. Easily identifiable "independent" workers, such as freelancers, contractors and consultants, rely economically on their clients, and many truly independent workers have little autonomy in the specification and timing of the work undertaken. Even when other more suitable criteria are considered, such as discretion over the amount of time to complete work and specifications on how work is to be done, there will be an arbitrary line between homeworkers and independent workers which will make practical implementation difficult. The omission of a criterion on time spent on home work means those who work for a short time or on an irregular or ad hoc basis, including office workers and managers who work

occasionally at home or who take work home, would be classified as homeworkers. This has implications for the notification and registration requirements of the Recommendation. Subparagraph (b): The definition is so broad it could include customers.

Pancyprian Federation of Labour (PEO). Subparagraph (a): Agrees to adding criterion in the last three lines on employing assistants because it clarifies the distinction between a homeworker and a self-employed person or independent worker. Subparagraph (b): Agrees to alternative definition suggested by the Office.

Czech Republic. Subparagraph (a): The definition of home work should sufficiently reflect that work is performed in premises chosen by the worker, particularly the home; that the worker is not an independent or self-employed worker; and that a person freely chooses to be a homeworker rather than to work in the employer's premises. Such a definition would prevent discrimination against the worker and unfair competition. Home work should be carried out by the person concerned without employing other persons, thus the suggested additional criterion is preferred. Subparagraph (b): The Government prefers the proposed alternative definition.

Confederation of Industry and Transport. The proposed instruments are sectoral, implying that homeworkers would be subject to rights and obligations other than those applying to other workers. Thus, exact definitions of employer and worker are crucial. "Intermediary" should also be defined. It is conceivable that a homeworker might confuse the employer for an intermediary because both give out work and specify the scope and quality of the job. A homeworker could also be an intermediary for other homeworkers. Subparagraph (a): The criteria of autonomy and economic independence are not sufficient to distinguish between homeworkers and entrepreneurs and might be misleading. There is also no proper distinction between workers who might work at home and those who work predominantly at home. Independent workers, such as journalists and consultants, are economically dependent on the client. Even those who are truly independent have little autonomy in the specification and time of their work performance. There will be problems at national level in applying the proposed criteria. The text also omits a criterion of the amount of time spent in home work. Practically any worker who works from time to time at home, even for a few hours, may be a homeworker. This would create special problems under the registering and reporting provisions of the Recommendation and Paragraph 17 on compensation. Subparagraph (b): The proposed definition, apparently the first formal definition of employer in an ILO instrument, includes persons not normally considered employers, such as clients, with the corresponding obligations of employers. Given the unclear definition of homeworker, considerable confusion would arise if there was no clear distinction between employment and commercial contracts.

Czech-Moravian Chamber of Trade Unions (CMCTU). The CMCTU believe the original text should be retained. It is broader and a better basis for national legislation, taking account of local conditions.

Confederation of Arts and Culture. Subparagraph (a): The Confederation supports the additional criterion suggested by the Office. In cases where the homeworker employs other persons, he or she would become at the same time an

employer. This would contravene the Czech Labour Code on personal performance of work in employment relationships. Subparagraph (b): The Confederation favours the alternative definition suggested by the Office. The Convention need not refer to home work which is carried out outside the context of an enterprise.

Estonia. The original text should be retained.

Fiji. FTUC. It is important that the good comprehensive definition agreed upon in the first discussion be maintained. All references to intermediary should be deleted, except for Article 8. It is also important to make sure that homeworkers who receive work through intermediaries are not excluded from the scope of the instrument, nor that employers who use intermediaries can evade their responsibilities.

Finland. Subparagraph (a): The definition of home work is broad, but in most cases special provisions in national law are not inconsistent with the proposed Convention, though some grey areas remain. The Government is opposed to adding a further criterion on employing assistants, as it does not clarify the difference between homeworkers and independent workers and could exclude persons who should be covered. Subparagraph (b): Supports alternative definition to clarify that the definition does not include the customer/client relationship, but because home work exists in the public sector as well, delete "business" or say "business or other activity". The Government also supports deletion of direct reference to intermediary.

SAK. Subparagraph (a): It is acceptable that true independent work falls outside the scope of the Convention. Points out that work in the service branches, such as care work in the patient's home, is performed in a situation equal to that of homeworkers — except the place is chosen by the employer. Such situations should be considered in the light of all the criteria in the definition. SAK opposes adding further criterion on employing assistants because the use of assistants does not make a person independent. Subparagraph (b): "Business activity" should not be understood in too narrow a sense since non-profit and public corporations may give out home work.

AKAVA. Subparagraph (a): AKAVA agreeds with the original text and opposes adding criterion "does not employ other persons to assist him or her". Subparagraph (b): AKAVA is opposed to the phrase "in pursuance of his or her business activity".

Finnish Confederation of Salaried Employees (STTK). Subparagraph (a): The terms "home work" and "homeworkers" should be confined to persons in an employment relationship. The possible additional criterion on employing assistants seems unnecessary. Subparagraph (b): The STTK agrees. It is better than the Office alternative.

France. Subparagraph (a): The Government opposes additional criterion suggested by the Office which would prevent France from ratifying the Convention. French law permits homeworkers to be assisted by family members.

CNPF. Subparagraph (a): This definition is too wide and vague and could include many persons who occasionally work at home. The criteria of autonomy and economic independence are left wide open to different interpretations, and the term "independent worker" is not defined in any international instrument. Subparagraph (b): This definition is just as vague. Any person who gives out work to be done at home would become an employer. This could confuse clients with employers.

CFDT. Subparagraph (a): The definition with its three cumulative criteria is satisfactory. The possible additional criterion on employing assistants has not been discussed and is not acceptable. "Other persons to assist" the homeworker could be either family members, in which case it should not affect the definition of the homeworker, or workers who benefit economically from the homeworker, in which case it would alter the status of the homeworker. Subparagraph (b): The CFDT agrees to the alternative definition.

Germany. Homeworkers, not "ordinary" employees, should be covered. The following alternative definition is proposed: ". . . the term "home work" means work carried out by a person, to be referred to as a homeworker (i) for remuneration; (ii) in gainful employment; (iii) in a place of work of his or her own choice outside the premises of the enterprise (i.e. in his or her own home or in other premises of his or her own choice); (iv) having been commissioned by a principal *Auftraggeber* [commissioner/assigner of work], on his or her own or with the assistance of other persons, as long as this person does not have the degree of autonomy and economic independence necessary to be considered an independent worker under national laws or court decisions. The term "principal" means a person, natural or legal, who gives out home work in pursuance of his or her commercial activity". Subparagraph (a): Adding another criterion on employing assistants could result in uncertainty as to whether homeworkers who carry out work with the assistance of members of their families still fall within the scope of the instrument. The German Home Traders Act allows up to two outside helpers or homeworkers. The further criterion would exclude those. The Employment Promotion Act gives homeworkers the same status as other employees, which is necessary because homeworkers are not personally dependent and are therefore not usually considered employees under labour law (so-called persons similar or assimilated to employees). Equal status means that homeworkers are entitled to the same benefits under that law as employees. Subparagraph (b): Opposes the alternative definition, because under the Social Code, where work is procured through an intermediary, that intermediary is considered to be the employer, whereas the person for whom the work is carried out in the final analysis is considered to be the principal.

BDA. See comments under Paragraph 2 of the Recommendation concerning the need to distinguish between plant workers and homeworkers and proposed alternative definitions.

Greece. Subparagraph (a) (iii): Acceptable in its present form, but could also accept the additional criterion suggested by the Office. It would add clarity and complete the definition; it would concern only persons who are linked directly to and who are dependent on the employer. Subparagraph (b): Agrees to alternative definition suggested by the Office.

Honduras. Subparagraph (b): The Government agrees with the terminology in the original text.

Hungary. Subparagraph (a): The definition does not clearly distinguish homeworkers and independent workers. National law does not use the concept of independent worker, thus does not define the extent of self-reliance and economic independence necessary to be an independent worker. Rather, the extent of self-reliance and economic independence result from the features of a given legal

relation; an agent has greater self-reliance than a person in a labour relation. The basis of distinction is the legal relation actually made between the parties. As to adding a further criterion, it is unreasonable to exclude help given by a person living in the same household with a person who works at home. Exclusion could only be made in respect to employment in an independent legal relationship. Subparagraph (b): The Government supports deleting the reference to intermediary (see comments under Article 8), but suggests inserting "economic activity" in addition to "business activity" because not only profit-oriented organizations can employ homeworkers. The following is proposed: "an employer is a person who, in the framework of his/her business (economic) activity, hires a private individual for work to be performed at home. Only a person with legal status can be an employer". The employers' and workers' organizations believe that the concept of "employer" and persons working at home should be defined under rules of labour relations. The employers' organizations propose the following: "an employer is a person who concludes a contract of this nature as a principal, i.e. who has employees".

India. SEWA and Hind Mazdoor Sabha. Subparagraph (a): The definition of homeworker was arrived at after considerable discussion to cover the various situations existing in different countries, and it is in line with India's national laws, such as those relating to minimum wages and *bidi* and cigar workers. It should be retained as it is. Subparagraph (b): Should be retained as is.

Centre of Indian Trade Unions (CITU). Subparagraph (a): CITU agrees to adding criterion suggested by the Office. Subparagraph (b): Agrees to alternative definition.

Italy. Subparagraph (a): This definition, as it stands, does not seem to make the necessary distinction between independent workers and employees working at home. Perhaps less flexible indicators are necessary to define the degree of autonomy and the economic independence of homeworkers.

CONFINDUSTRIA. There is no clear definition of intermediary. Subparagraph (a): The definition is too broad and confuses homeworkers with independent workers and people who work at home only occasionally. The criteria of autonomy and economic independence are ambiguous. Subparagraph (b): The definition is confusing between employers and clients.

ASSICREDITO. Subparagraph (a): Italian legislation has a much stricter definition of home work — which regulates the employer-employee relationship — than that contained in the proposed instrument; this is due to the decentralized nature of home work. But the definition given here only refers back to national laws which must specify the degree of autonomy and economic independence required for a worker to be considered "independent". There is thus a danger that it could extend to activities outside this particular employer-employee relationship. The additional criterion suggested by the Office, which prohibits any assistance by other persons, contradicts the social and economic reality of home work.

CONFCOMMERCIO. Subparagraph (a): There could be problems of interpretation because the concepts of autonomy and independence are so broad.

Japan. Subparagraph (a): Supports inserting in the last part of the clause "does not employ other persons to assist him or her". Subparagraph (b): Retain the definition as is. The meaning of "in pursuance of his or her business activity" is not clear.

NIKKEIREN. (Read as if Recommendation.) Subparagraph (a): Homeworkers are basically self-employed workers, but they also have a nature analogous to employees (wage-earners). This Article only differentiates between homeworkers and independent workers, but does not contain a clear provision to exclude ordinary employees (wage-earners). Supports adding the criterion "does not employ other persons to assist him or her" in the last part of the clause. It clarifies the range of homeworkers. Subparagraph (b): Generally, the term "employer" is used as a counter-concept to employee (wage-earner). To avoid confusion, the term "contractor" should be used. Concerning the proposed alternative definition, instead of inserting "in pursuance of his or her business activity", define "employer" to mean a "manufacturer, processor or distributor, etc., who is an individual or a legal entity giving out home work either directly or through an intermediary".

JTUC-RENGO. Subparagraph (a): Basically supports, but concerned about the exclusion of persons from the definition of homeworker who have the degree of autonomy and economic independence necessary to be considered independent workers. It is possible that, based on the definition, the Japanese government would insist that self-employed and workers on subcontract who have economic independence should be excluded. But in Japan, there are "full-time homeworkers" who have economic independence and "part-time homeworkers" who have no economic independence. The JTUC believes that the majority of homeworkers are "part-time homeworkers" who, although defined as self-employed workers under national laws, have no economic autonomy and are in a weak position to depend on intermediaries. It supports adding "does not employ other persons to assist him or her" in the last part of the clause to more clearly distinguish homeworkers from self-employed workers who employ others. It is consistent with the Industrial Home Work Act of Japan which defines a homeworker as a person who works "only with the help of his relatives or family living with him . . .". Subparagraph (b): As pointed out in the Office Commentary in Report IV (1), as long as the definition of "home work" has been made by distinguishing homeworkers from independent workers, the definition of "employer" would not cause confusion. Inserting "in pursuance of his or her business activity" is not clear and it is not necessary to revise the original text.

Lebanon. Subparagraph (a): Clauses (i), (ii) and the first part of (iii) are acceptable. Agrees to adding "does not employ other persons to assist him or her", but add "without the employer's approval" to enable the worker to be assisted to meet deadlines or emergency situations. Subparagraph (b): Agrees to proposed alternative definition.

Malaysia. MEF. Intermediary is not defined, though it is used several times. In some cases, there may be many levels of intermediaries between the homeworker and the employer, such that the homeworker may consider those who allocate the work and specify how it is to be carried out to be the employer. Homeworkers may also be intermediaries if they are responsible for allocating work. Subparagraph (a): [Gave some arguments as other employers' organizations. See e.g. CEIF, Cyprus, under subparagraph (a).] Subparagraph (b): No distinction has been made between commercial and labour contracts in the definition of "employer". It could apply to numerous examples of commercial contracts, such as commissioning an architect for a particular job or commissioning an individual piece of furniture or item of clothing, with considerable obligations on the person commissioning the work.

Mexico. Subparagraph (b): The concept of employer is not very clear. It allows for all sorts of suppositions and could exclude some employers of homeworkers.

New Zealand. Subparagraph (a): The Government agrees with the original text. It is not appropriate to apply remedies or laws designed for the employment relationship to a genuine independent contractor relationship. Where the distinction is not clear, the Courts should decide the issue based on the criteria given. Subparagraph (b): Supports alternative definition suggested by the Office.

New Zealand Employers' Federation (NZEF). Subparagraph (a): Agrees to additional criterion suggested by the Office. However, the definition could still include employees who from time to time take work home. Inserting after "to be referred to as a homeworker", "other than a person ordinarily employed to perform work for an employer in premises under the employer's control", would clarify the matter. Furthermore, many persons working at home prefer to do so on an independent contractor basis, and this definition will not necessarily exclude them. There would be many situations to which it would be inappropriate to apply a catch-all Convention of this nature. Subparagraph (b): Agrees to alternative definition suggested by the Office. Nevertheless, it is still inadequate, as it does not clarify sufficiently the boundaries between employers, customers and clients, and whether an employer/employee relationship exists.

NZCTU. Subparagraph (a): The NZCTU agrees with the present definition but would like to see the reference to "national laws, regulations or court decisions" deleted. The definition should capture those who are homeworkers, regardless of the apparent contractual relationship. National laws tend to treat many homeworkers as "self-employed" on assumptions regarding autonomy, freedom and "choice", but do not make distinctions according to economic independence. The definition, which governs the scope of the application of this Convention, should stand alone, independent of national laws and regulations. Opposes further criterion suggested by the Office. Subparagraph (b): Prepared to support the alternative definition, but see under Article 8 below.

Netherlands. Subparagraph (a): Opposes adding another criterion on employing assistants. Homeworkers who are assisted by family members that live in the same house should be protected. If they employed other persons, there would be such a degree of autonomy and economic independence that they could be considered as self-employed. Subparagraph (b): Even though it is clear from the purpose of the Convention and the distinctions made in the definition of home work that consumers are not included, the proposed alternative definition is acceptable on grounds of clarity.

Nicaragua. Subparagraph (a): Agrees to adding the criterion on employing assistants. Subparagraph (b): Agrees with the original text.

Norway. Subparagraph (a): No objections to adding criterion on employing assistants. Subparagraph (b): Under Norwegian laws and practice, "intermediary" would, as a general rule, be regarded as an employer. The phrase "causes home work to be given out" is unclear.

LO. Subparagraph (a): LO agrees with the original text and opposes adding another criterion. It is pleased that the definition covers not only industrial home work, but also telework. Subparagraph (b): Opposes alternative definition.

Peru. Subparagraph (a): Agrees to adding criterion suggested by the Office. Subparagraph (b): Suggests adding "related to his or her principal economic activity".

Philippines. Subparagraph (a): The Government agrees with the original wording. The phrase "other than the workplace of the employer" is important to prevent a situation where a person is made to work like a factory worker but paid as a homeworker without the other benefits granted to factory workers. It opposes the additional criterion at the end of the clause on employing assistants, because this factor does not make a person an employer and could impede home work as an employment opportunity. Subparagraph (b): Concerning the proposed alternative definition, the term "intermediary" should be retained to recognize the presence of intermediaries in home work and to be consistent with Philippine law on home work, wherein the term "employer" includes persons who act on account or benefit of the employer, such as employees, agents, contractors, subcontractors and others in delivering, causing to be delivered, or in selling and repurchasing goods, articles or materials for home-work processing.

Portugal. Subparagraph (a): The additional criterion suggested by the Office restricts the coverage and would exclude from the Convention some homeworkers who act in the capacity of employers and make a profit from home work. However, homeworkers do not become employers if they are assisted by their families or members of a common household, or if they share work with other homeworkers. Proposes the following wording: "as long as this person does not employ other persons to assist him or her, except members of his or her family or of a common household". Subparagraph (b): Agrees to alternative definition proposed by the Office as it removes the confusion between an employer and a client.

CIP. Subparagraph (a): This definition is too broad. A distinction has to made between those who work most of the time in home work and those who do so on an irregular basis. The criteria of degree of autonomy and economic independence are insufficient and too inconsistent to draw a distinction between homeworkers from independent workers. Subparagraph (b): There is still no distinction between a commercial or civil contract and a labour contract.

UGT. Subparagraph (a): Opposes additional criterion suggested by the Office. A homeworker who makes a profit from employing others would, in any case, be excluded from the definition by the criteria of autonomy and economic independence. Subparagraph (b): The deletion of the reference to intermediaries, as suggested by the Office, does not solve the problem, because in reality intermediaries exist and homeworkers who receive work through them risk not being protected by the Convention. Unless intermediaries are prohibited by law, it is better to regulate their activities rather than have a legal vacuum. Suggests alternative as follows: "the term 'employer' means a person, natural or legal, who assumes the risks of the economic activity and who gives out home work directly or indirectly through an intermediary, when such an entity (figure) is permitted by national law and practice".

Union of Workers in Embroidery, Tapestry, Textile and Handicraft Industries of the Autonomous Region of Madeira (Embroidery Workers of Madeira). Subparagraph (a): Portuguese law permits homeworkers to be assisted by up to four persons. Subparagraph (b): The reference to intermediaries should be retained.

Saudi Arabia. Subparagraph (a): It is more appropriate for the definition to include a criterion preventing the homeworker from using other persons to help him or her.

Slovakia. Subparagraph (a): Supports adding criterion to the final part of the clause that the person "does not employ other persons to assist him or her". This makes a clearer distinction between a homeworker and someone who becomes an employer. Otherwise confusion would arise in labour relations due to a homeworker also giving out work. Subparagraph (b): Opposes alternative definition. The current text is preferred in that it covers all home work.

Spain. Subparagraph (a): The present definition is acceptable. Adding the criterion suggested by the Office could be problematic for Spanish legislation dealing with contracts for group work. Subparagraph (b): The Government agrees to the alternative definition suggested by the Office.

Sweden. Subparagraph (a): The definition embraces a wide variety of jobs and working conditions, ranging from such tasks as assembly and sewing to IT-based telework from home. Since the definition does not indicate any limits of time input, it is anticipated that the number of homeworkers will increase considerably parallel to the development of telework. The Swedish ILO Committee considers the Office commentary statement on the meaning of choice troublesome. Subparagraph (b): The use of the term intermediary here and in Article 8 is unclear. Anyone engaging a person to do home work in Sweden assumes the normal responsibilities of an employer, unless the person is self-employed. The term intermediary could hardly be meant to refer to an employee designated by the employer to direct home work, nor can certain employer responsibilities be delegated. The reference is probably meant to apply to situations where the employer's economic dependence on one client is so great that, in practice, he or she has very little scope for influencing the employee's working conditions. In this case, under the proposed Convention, such an employer would be regarded as an intermediary and the client as the employer. This interpretation deviates from the Swedish concept of employer. It is difficult to arrive at an unambiguous definition to cover situations in which a client ordering a product would be made to incur the responsibilities of an employer. Nor is it reasonable for general responsibility of this kind to be imposed on a client ordering a product made by home work.

SAF, Federation of Swedish County Councils and other public authorities (joint reply). The definitions of "home work" and "employer" would cause problems; they deviate from national law and are alien and hard to understand. Not defining "intermediary" is also of concern.

SAF. Subparagraph (a): It is of concern that the definition extends to salaried employees who take work home or do telework, regularly or otherwise, for one or two hours or days each week.

TCO. Subparagraph (a): It is gratifying that the definition refers not only to industrial home work, but also to the expanding field of telework. A further criterion should not be added on employing assistants, as it is relatively common for the homeworker to share work with members of the family to meet deadlines. Subparagraph (b): The instrument should include homeworkers who receive their jobs through an intermediary, but also distinguish between customers and employers.

The alternative definition is accepted, but with "in pursuance of his or her business activity" placed at the end.

Switzerland. This definition is consistent with the Swiss Home Work Act. Subparagraph (a): The suggested additional criterion could create a problematic situation in certain regions of the world, especially with regard to the employment of children, and would be difficult to verify in practice. Under Swiss law, the homeworker works along or with the help of members of the family, which is not consistent with the proposed criterion. Subparagraph (b): The alternative definition suggested by the Office helps to make the distinction between an employer-employee and a client-seller (dealer). If it is decided to retain the reference to the intermediary, the alternative definition should be revised to include it.

UCAPS. The text does not make an adequate distinction between homeworker and independent worker and between employer and client. The criteria of autonomy and independence are inadequate and lack substance.

Swissfashion. Subparagraph (a): Add "alone or with family members in their household" at the end of clause (i). In (iii), delete "or service". This could include telework which is changing rapidly, and it would be absurd to hinder its development through bureaucratic prescriptions. Furthermore, this type of activity is not suitable for control by executive organs.

CP. Subparagraph (b): Delete "either directly or through an intermediary". The intermediary is not defined in the text and, in any case, is irrelevant in this context. Essentially, the relationship is between the employer and the homeworker.

USS and VSA. Subparagraph (a): Do not add a further criterion; persons not deemed to be self-employed might call upon the assistance of others, such as family members. It is not in the interest of employees to exclude such persons from protection. Subparagraph (b): The USS and VSA support the proposed alternative definition.

Syrian Arab Republic. Subparagraph (a): It is obvious from the last part of the clause that the homeworker is not considered a homeworker, but an independent worker, if he or she enjoys a degree of autonomy and economic independence. The homeworker should be a dependent worker, even if he or she enjoys a degree of economic independence, as the concept of dependence in Syrian labour law is confined to legal dependence, not to economic dependence. The definition should be amended accordingly.

Thailand. Subparagraph (a): The Government supports adding to the final part of the clause a criterion on employing assistants to avoid confusion about the status between an intermediary and a homeworker. Subparagraph (b): It opposes deleting the reference to intermediary. Homeworkers are mostly engaged, employed or contracted by an intermediary, rather than an actual employer.

Trinidad and Tobago. Employers' Consultative Association of Trinidad and Tobago (ECA). Subparagraph (a): There is no set definition for a homeworker, but a basic guideline that can be observed to differentiate between an independent worker and a homeworker. ECA agrees with the statement in the Office commentary in Report IV (1) that policies can be developed to take into account the types and special characteristics of home work within each country. It opposes adding a further criterion on employing assistants, as it does not account for the type of home work or special

characteristics of home work. If another person is needed to assist, accommodation should be made, provided that the quality of work is not compromised and there is no additional cost to the employer. The last part of (a) should read as follows: "as long as this person does not employ more than (specify a number) persons to assist him or her, the quality of work is not compromised, the employer bears no additional costs and the homeworker does not have the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions". Agrees that homeworkers have the right to choose the venue for work. Subparagraph (b): Add at the end of the alternative definition: "with the view of making a profit".

Tunisia. Subparagraph (a): The Government agrees to the additional criterion suggested by the Office, but "other persons" should clarify whether it includes members of the homeworker's family. Subparagraph (b): Agrees to alternative definition suggested by the Office.

United Kingdom. CBI. As the proposed Convention and Recommendation are sectoral instruments, they imply that specific and different treatment is required for homeworkers beyond that envisaged for general employees; thus the definitions are critical because national laws must be based on them. The term "intermediary" should be defined since it is used throughout the instrument. In some cases, there may be many levels of intermediaries between the homeworker and the employer, such that the homeworker may consider those who allocate the work and specify how it is to be carried out to be the employer. Some persons, such as homeworkers involved in allocating work or employees of the employer, might end up being liable for the financial prudence of the employer when they should not be. Subparagraph (a): The scope of the definition is too broad. It makes the provisions in the proposed Recommendation on registering homeworkers by their employers and on employers notifying the competent national authority and providing details a cumbersome machinery. [Gave further explanation the same as other employers' organizations. See e.g. CEIF, Cyprus, under subparagraph (a).] Subparagraph (b): It is the first time a formal definition is given of "employer" in a Convention, and it is so broad that the definition of employer can be confused with a customer. It could apply to numerous examples of commercial contracts, such as commissioning an architect for one piece of work or commissioning an individual piece of furniture or item of clothing, with considerable obligations on the person commissioning the work. The regular definition of employer would assume one has employees, but the definition of homeworkers is ambiguous because it is not clear that homeworkers will always be employees. The suggested alternative definition does not properly address these problems.

Trades Union Congress (TUC). Subparagraph (a): The TUC rejects the addition of another criterion on employing assistants to the final part of the clause. It would be wrong to exclude homeworkers from the scope of the Convention because they might, at times, share work with other members of their family. Subparagraph (b): The key is to ensure that homeworkers are not excluded who do not have a clear relationship with employers, but receive work through some sort of intermediary. The TUC would accept a reformulation as suggested by the Office which clarifies that intermediaries are included. Adding the words "in pursuance of his or her business activity" should

distinguish customers from primary employers, but the phrase should refer only to "causes home work to be given out", and thus be placed at the end.

United States. Subparagraph (a): The Government opposes adding "does not employ other persons to assist him or her", because homeworkers who give work to family members or others usually do so because of excessive demands by the employer. They are still homeworkers and need protection. Language should be added to exclude those who regularly work in the employer's establishment and on occasion take home reading material or work to complete to avoid record-keeping burdens and skewing labour statistics. Subparagraph (b): Opposes proposed Office revision because it eliminates the direct reference to intermediary, thus ignoring problems where intermediaries are involved in the distribution of work. Additionally, there should be a definition of "intermediary" in this or Article 8 to clarify that an intermediary could be an employee of an employer who delivers bundles of work to homeworkers, or another employer, such as a sub- or sub-sub-contractor, who employs homeworkers.

USCIB. Subparagraph (a): The definition is too broad and includes virtually everyone who works. An acceptable definition could only result from limiting the scope of the Convention and the definition of home work to traditional home work, such as making garments where individuals are not independent contractors or otherwise self-employed. Subparagraph (a) (i) is too broad and means that virtually any individual working off site, but not at the workplace of the employer or in the home (i.e. consultant), is presumably a homeworker. The language after (a) (iii) is inadequate to resolve the question of when independent contractors are not to be considered homeworkers. The ILO supervisory machinery would interpret and apply the exception narrowly so as not to override the protection for home work. Because virtually no one is ever truly autonomous or economically independent, virtually no worker could be considered an independent contractor under the Convention. The USCIB opposes the Office suggestion to add a further criterion to the final part of (a): it would make the definition apply to non-employees only. Subparagraph (b): The proposed alternative by the Office does not solve the problem of a too broad definition of employer. Attempting to cover and encompass all forms of home work and all those providing it is flawed without specifying the nature of such home work.

Union of Needletrades, Industrial and Textile Employees (UNITE). Subparagraph (a): The Union opposes the Office proposal to add a further criterion, since homeworkers who are forced to seek assistance due to enormous amounts of work need protection. Those who derive significant economic benefit from employing assistants would likely be excluded as having a sufficient degree of autonomy and of economic independence to be considered independent. Subparagraph (b): Opposes eliminating the reference to intermediary, as it removes the responsibility of the employer for work given out indirectly through intermediaries, which is a major cause of problems for homeworkers including depressing levels of remuneration and avoiding legal obligations. Supports adding "in pursuance of his or her business activity" to distinguish customers ordering goods for personal use from employers.

Venezuela. Subparagraph (a) (i): Delete "or in other premises of his or her own choice". Add "(ii) with the help of family members or without". In (iii), replace "as specified by the employer" by "under the economic dependence of the employer and

as specified by the latter but without his or her direct supervision". Subparagraph (b): Prefers alternative definition suggested by the Office because it does not refer directly to intermediaries and it excludes those who contract a service for their own consumption or personal use.

Zimbabwe. Subparagraph (a): Adding a criterion that the person "does not employ other persons to assist him or her" does not help to distinguish between homeworkers and independent workers, because the nature of home work makes it difficult to ensure that the person does not employ others. Subparagraph (b): Supports deletion of reference to intermediary because it is difficult to determine.

Office commentary

Definition of "home work"

After the conclusion of the first discussion, conflicting views remained as to the appropriateness of the definition of home work. This is reflected in the replies on this Article. A number of Governments and most workers' organizations indicate that the current definition is sufficiently clear and strikes the right balance in that national law makes decisions on the distinction between homeworkers and independent workers based on the criteria given. Many employers' organizations and some governments maintain that the definition is too broad and unworkable; they particularly feel that it does not sufficiently distinguish between homeworkers and independent workers because autonomy and economic independence are inappropriate criteria, which could include, for example, freelancers and consultants; that it does not have a criterion of time spent in home work, thus irregular and occasional home work would be included; and that it could count employees who take work home as homeworkers.

It is recalled that the original Office text provided that persons who met the requirements in the core part of the definition of home work (subparagraphs (a) (i), (ii) and (iii)) would be considered as homeworkers, unless they had the degree of autonomy and fulfilled other conditions (those in addition to (i), (ii), and (iii)), necessary to be considered independent workers under national laws, regulations or court decisions. For example, the fact that work was carried out at home or a place aside from the workplace of the employer, or that a homeworker supplied the equipment used, could not be factors in determining independence. The Conference Committee adopted a formulation which removed the reference to other conditions (some believed that this would be used unfairly to classify homeworkers as independent workers) and replaced it with a requirement for a degree of economic independence.

To address the concern that the definition would extend to independent entrepreneurs, the Office invited member States to comment on the possibility of adding another criterion to the final part of subparagraph (a) as follows: "does not employ other persons to assist him or her". This change has not been incorporated into the text since the number of governments supporting and opposing it are almost evenly divided. The reasons given in general, however, indicate that there was some misunderstanding of the proposal. Some interpret the phrase broadly to prohibit homeworkers from being assisted by anyone, including family members. More than half of the Governments and workers' organizations who oppose the addition do so

because they do not want to preclude the possibility of homeworkers being assisted by family members. The Office points out, however, that by using the word "employ", the phrase would apply only to the actual employment of others. One workers' organization which supports the addition understood it as not precluding assistance from family members.

In a couple of instances, governments or workers' organizations cite legislation allowing homeworkers to be assisted by family members or to employ a certain number of assistants without losing homeworker status. One Government emphasizes that homeworkers that give work to family members or others usually do so because of excessive demands by the employer, and are still homeworkers and need protection. Some workers' organizations and governments argue that the additional criterion is unnecessary because those who derive significant economic benefit from employing assistants would most probably be excluded as having a sufficient "degree of autonomy and of economic independence" to be considered independent.

Slightly less than half of the governments commenting on the proposal, support the proposed criterion, believing it would make the distinction between independent workers and homeworkers clearer. A few state that it would be consistent with national law requiring the personal performance of work for an employment relationship, or that it conferred the status of employer on those who create an employment relationship by hiring others.

There are some objections, primarily from employers' organizations and some Governments, that economic independence is not a concept in national law. Others are insistent that degree of autonomy and economic independence do not suffice to distinguish independent workers. For example, it is argued that freelancers and consultants are economically dependent on clients and may have little autonomy in the specification and timing of the work undertaken. The Office believes that such concerns will be addressed when determinations are made under the criteria given in subparagraph (a). One Government states that the text should be amended to consider a homeworker as a dependent worker even if he or she enjoys a degree of economic independence to be consistent with national law which has the concept of legal dependence, not economic dependence.

Employers' organizations and a few governments feel that the instruments should be limited to those who regularly work at home or for whom home work is their primary work. The Conference Committee had rejected an employer subamendment during the first discussion which proposed that the Convention should be applied only to persons who were homeworkers for the "primary part of their working time". But there is still concern about persons who are employees of an employer in an enterprise, who might also be considered homeworkers because they take work home or work at other premises during the course of their employment. Several employers' organizations object especially to the implications of this interpretation for reporting, record keeping, and registering under the Recommendation. However, few specific suggestions have been made to change the wording.

The Office recalls that the definition is to be viewed within the context of the proposed Convention as a whole, the goal of which is to improve the situation of homeworkers, and that the intent is to have a broad definition so as to include those who may not already be recognized as having employee status but who are not truly independent. Where protection is already equal to or greater than that provided in the Convention, its provisions would not be relevant. It should also be pointed out that this

is not the first time, nor the only example of where there are difficulties in labour law in distinguishing between persons who are to be considered employees or employee-like, rather than independent or self-employed. As pointed out in many replies in Report V (2), there are various factors or conditions on which these determinations are based. Within the context of home work, the proposed instruments provide core criteria which bring persons into the definition of homeworker, while leaving the final distinguishing characteristics as to who is not a homeworker to national law. Given the divergent views in the replies, the Office leaves any possible amendments to the Conference to make. It merely offers for consideration a new subparagraph (b) that could be inserted before the definition of employer, as follows:

(b) A person with employee status does not become a homeworker within the meaning of this Convention simply by performing part of his or her work for the employer in his or her own home. The intent is not to begin to narrow the definition such that the persons in need of protection are excluded or to weaken protection of non-homeworkers who already have full protection as employees.

In a few instances, alternative definitions or rewording have been suggested. One workers' organization proposes deleting "of his or her own choice", since homeworkers would not necessarily be able to work in any premises of their choice, or because their continued employment or relationship with the employer might come to be dependent upon working at home. Another proposes inserting "free" before "choice". One employers' organization would like to see choice apply to work in the home, as well as to other premises. One Government is of the opinion that the definition should reflect that a person freely chooses to be a homeworker rather than to work in the employer's premises.

One employers' organization would delete "or service" from clause (iii) to exclude telework. Several other replies specifically welcome the application of the proposed instruments to services and telework. Two Governments and a workers' organization disagree with the drafting change indicated in Report IV (1) to clause (iii) because it deletes the reference to intermediary. One government agrees with the definition, but states it would be an obstacle to ratification if definitions had to be adopted into national legislation. Another government would delete the reference to national laws, regulations and court decisions in the last part of the subparagraph. One government proposes an alternative definition to home work and employer, substituting "principal" for employer. It believes that "ordinary" employees should not be covered, as do some other employers' organizations. A few governments and employers' organizations repeat that only work under the subordination of the employer should be covered. The Office has not taken up any of these suggestions either because they would not add clarity or would be inconsistent with action taken during the first discussion; they should thus be submitted for consideration by the Conference.

Definition of "employer"

While the Office did not see a serious problem concerning the possibility that confusion might arise in interpreting "employer", such that it would extend to customers or clients under commercial contracts, it tried to meet these concerns by offering the following alternative definition of the term "employer":

the term "employer" means a person, natural or legal, who, in pursuance of his or her business activity, gives out or causes home work to be given out.

The majority of Governments agree that this definition is sufficiently clear. Almost half of those who object either want to retain the reference to intermediary or are concerned that "business activity" is not broad enough to include public or non-profit bodies. Most workers' organizations oppose the alternative, but many of those similarly either want to retain the reference to intermediary or are anxious that home work given out by public or non-profit bodies might not be covered.

The Office has introduced part of the change suggested in Report IV (1) by adding "in pursuance of his or her business activity" at the end of the definition. "Business" is sufficiently broad to cover the "business" of governmental or non-profit organizations and is not restricted to private sector profit-making activities. In addition, this definition of employer, in combination with the definition of home work and the provisions on the national policy on home work, sufficiently distinguishes commercial from labour contracts for the purposes of this Convention and does not create more difficult problems than already exist in labour law for determining when a worker becomes independent. The reference to intermediary, however, has been retained. Some replies agree that a reference to intermediary should not be included; however, other replies object to deleting the direct reference to giving out work through an intermediary because they want to ensure that homeworkers who receive work through an intermediary will be covered. The language in the alternative, "or causes home work to be given out" indirectly covers the possibility of an intermediary giving out work. Nonetheless, because of the conflicting views on retaining the reference to intermediary here and in other provisions of the proposed instruments, the Office believes the Conference should take the final decision on this issue. See also the Office commentary under Article 8 which discusses further the issue of intermediaries.

Finally, the French and Spanish translations of "business activity" have been brought more closely in line with the English.

Article 2

This Convention applies to all persons carrying out home work as defined under Article 1 (a).

Observations on Article 2

Australia. ACTU. Agrees.

Canada. Agrees.

Germany. Add "unless they come under the general provisions of labour law" at the end of the sentence.

Switzerland. See comments under Article 1 above.

UCAPS and CP. Agrees, provided there is a clearer definition of homeworker in Article 1.

Venezuela. Agrees.

Office commentary

Very few replies refer to this Article. One Government suggests adding "unless they come under the general provisions of labour law" at the end of the sentence.

Article 3

Each Member which has ratified this Convention shall adopt, implement and periodically review a national policy on home work aimed at improving the situation of homeworkers in consultation with the most representative organizations of employers and workers and, where they exist, with organizations concerned with homeworkers and those of employers of homeworkers.

Observations on Article 3

Argentina. Delete "and periodically review", as this could lead to different interpretations and would oblige member States to develop almost permanent activities in this area at the expense of other social labour problems that may have a higher priority.

Australia. Agrees.
ACCI. Agrees.
ACTU. Agrees.

Brazil. Agrees. However, the order of consultation should be changed to give preference to organizations directly concerned with homeworkers. The second part of the Article would read as follows: "in consultation with organizations of homeworkers and employers of homeworkers, and where they do not exist, with the most representative organizations of employers and workers".

Canada. Agrees, on the assumption that the protection of homeworkers does not necessarily require separate sectoral policies for homeworkers but could be incorporated into existing national employment and labour policies. Such clarification was given by the Legal Adviser during the first discussion.

Cyprus. PEO. Agrees.

Greece. Agrees.

Finland. It is unnecessary to work out a separate national policy on home work or to periodically review it. See reply under Article 4.
SAK. Such policy would enable cooperation between the State, the employers and the workers in a way which allows monitoring of national progress on home work and the promotion of the status of homeworkers.
AKAVA. Agrees.

France. Reiterates its wish to make a link with employment policy, even though the amendment presented by the employers' group during the Committee was not acceptable.
CNPF. The words "periodically review" are not necessary, because any policy can be reviewed at any time. It might encourage opening negotiations on a regular basis.

even when there is no need for them. Furthermore, the formulation implies consultations with all organizations concerned with homeworkers and their employers, which might include a multitude of associations, including the most marginal and those representing only a very small number of homeworkers or employers in a very particular field.

Italy. There should not be a specific national policy on home work, but rather home work should be dealt with within the global national policies concerning employment. Agrees that the social partners should be involved in the development of occupational policies.

CONFCOMMERCIO. Although it appreciates the reference made to the role of the social partners in the adoption of policies on home work, the Confederation is still convinced that home work needs appropriate attention when global strategies in the social and labour field are being drafted. Paradoxically, a sectoral policy seems less realistic and could even hamper the rapid development of home work.

Japan. JTUC-RENGO. Agrees.

Lebanon. Agrees.

New Zealand. Special legislation or rules should not in general be adopted for particular groups, rather the same employment rights and obligations should apply to all. Policy should be directed towards removing any barriers which disadvantage any particular group and ensuring workers have equal opportunities to remedy grievances. Consultation about changes in legislation should be in accordance with national practice.

NZEF. Opposes drafting change made by the Office because it effectively isolates homeworkers as a sector, thus requiring the provision of a separate policy.

Nicaragua. Agrees.

Portugal. Opposes drafting change because it reinforces the obligation and could make ratification more difficult.

CIP. Home work is a flexible form of providing work which is useful and interesting for enterprises, workers and the economy in general. The obligation to adopt a national policy in this regard and its periodical review in the way it is proposed, could turn out to be incompatible with this concept.

Switzerland. Agrees.

UCAPS. These demands are being met in Switzerland.

USS and VSA. Agrees.

Trinidad and Tobago. ECA. Agrees.

Tunisia. Agrees.

Venezuela. Agrees.

Office commentary

Several governments and employers' organizations repeat arguments raised during the first discussion that there should not be separate policies for home work or that sectoral policies should not be promoted. One government reiterates that the policy should be one of removing barriers which disadvantage any group, rather than a

policy aimed at home work. It should be recalled that during the first discussion, a representative of the Legal Adviser stated that separate policies on home work were not required. A ratifying member could meet the requirement of Article 3 by integrating concerns for the improvement of the situation of homeworkers into other existing policies which might be relevant.

Two governments and an employers' organization would delete the requirement to review periodically the policy as they consider it too rigid or that it might automatically require a review even when this was unwarranted. Concerning the provision on consultation, one Government proposes redrafting the sentence to give preference to organizations directly concerned with homeworkers so that consultations with the most representative organizations of employers and workers would only take place if no organizations concerned with homeworkers and their employers existed. However, this seems to be contrary to the majority of views expressed during the first discussion. One employers' organization is concerned about the possibly large number of homeworkers' organizations which might have to be consulted. One government and one employers' organization oppose the drafting change made by the Office in Report IV (1) which replaced "shall undertake to adopt" with "shall adopt". But the change is consistent with the intent of the Convention that policies be adopted. The use of "undertake" might be interpreted to be a weaker formulation. The Office has not introduced changes to this Article.

Article 4

1. The national policy on home work shall promote equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.

2. Equality of treatment shall be promoted, in particular, in relation to:

(a) the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations;

(b) protection against discrimination in employment and occupation;

(c) protection in the field of occupational safety and health;

(d) remuneration;

(e) statutory social security protection;

(f) access to training;

(g) minimum age for admission to employment or work; and

(h) maternity protection.

Observations on Article 4

Argentina. Paragraph 1: Delete "and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise". Given its special characteristics, home work requires special standards, even when the same work is carried out in an enterprise. The expression "where appropriate" is vague. Paragraph 2: Delete. To give the instrument more flexibility, it is not convenient to include a detailed list.

Australia. Agrees.

ACCI. Agrees.

ACTU. Paragraph 1: Proposes replacing the second part of the sentence after "taking into account" with the phrase "conditions applicable to the same or a similar type of work carried out in an enterprise and, where applicable, the special characteristics of home work". "Applicable" is broader and preferable to "appropriate", and should be used to take into account applicable characteristics of home work as well as enterprise conditions. Paragraph 2: The following clauses should be added: "(i) termination; (j) superannuation; and (k) access to leave". These are critical to workers' conditions and should not be left to the Recommendation.

Austria. When implementing this provision, it must be borne in mind that equality of treatment in relation to occupational safety and health is not always possible. Provisions to ensure the technical and hygiene-related safety of workers cannot be applied to homeworkers, because the control required over the workplace environment and need to have access to the worker's residence would be an intrusion of the homeworker's privacy. However, providing protective equipment, suitable safety devices and maintaining equipment is realistic and feasible.

WKÖ. Equality of treatment between homeworkers and other wage-earners is not provided for in Austria, neither in relation to occupational safety and health nor remuneration.

Barbados. BEC. Paragraph 1: This is vague and impractical. Paragraph 2 (a) is superfluous. The BEC questions how (c) could be implemented unless the residence of the homeworker were an extension of the workplace; who would be responsible; and whether the employer would be responsible for safety and health in a private residence. Subparagraph (d) is a voluntary matter. Subparagraph (e) would be subject to the employment status of the homeworker or be provided by the person, if self-employed. Subparagraph (g) would only apply if home work interfered with schooling of a person under age 16. Subparagraph (h) is superfluous. If the homeworker is an employee, the Maternity Leave Act applies.

Belgium. CNT. Agrees that the principle of equality should apply to homeworkers, but with possible adjustments to take into consideration the special characteristics of home work, and the laws and regulations concerning individual and collective labour relations, occupational safety and health and social security. The social status given to homeworkers should not create a category of workers that would be marginalized compared to workers in the enterprise or independent workers. Standards should take into consideration the specific needs and problems of homeworkers and their employers. The principle of equality between homeworkers and other workers should be promoted in all the areas listed in paragraph 2.

Brazil. CNI. This provision is suitable for a Recommendation in the form of general guidelines. The promotion of equality between homeworkers and other wage-earners should be implemented in accordance with national law and practice, taking into account the situation in each country.

CNC. The characteristics of home work make it impossible to compare homeworkers with other wage-earners. Delete this Article and all other comparisons.

Canada. Agrees in principle, provided the words "taking into account the special characteristics of home work" remain in the text. However, subparagraphs (g) and (h) may be difficult to enforce in some provincial jurisdictions.

Cyprus. PEO. Agrees.

Egypt. Paragraph 2 (f) should provide for "appropriate" training and define the type, period and level.

Estonia. Paragraph 2: Subparagraph (a) should read: ". . . to establish or join workers' organizations".

Finland. Agrees, but it is unclear from Articles 3, 4 and 5 whether the conditions for the national policy would be met merely by giving homeworkers a legislative and practical status equal to other employees in relation to the factors in paragraph 2, subparagraphs (a)-(h).

STTK. Paragraph 2: A statement on the protection of working hours should be included in the list of clauses.

France. CNPF. The principle of equality is based on a wrong assumption that homeworkers are in an unfavourable position in all areas compared to workers in the enterprise, and disregards the positive aspects. Furthermore, the application of the principle could prove difficult, if not impossible, to apply in practice (for example, in the case of access to training), given the geographic dispersal. The text should be much more qualified.

Germany. Germany could not ratify a Convention with the requirement of equality of treatment laid down in this Article. First, homeworkers are not entitled to unemployment benefits if they are only available for home work, and there is no intention to amend the law due to the resulting increase in expenditure. Second, the phrase in paragraph 1 of Article 4 on "taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work . . . in an enterprise", could mean that there is an obligation to provide part-time homeworkers with the social insurance protection intended for full-time employees, even if the normal working time is very short. This goes beyond national law, which aims to bring about equality of treatment only with comparable wage-earners and which exempts wage-earners who work less than 18 hours a week from insurance contributions and thus unemployment insurance benefits.

Greece. Agrees.

Honduras. Agrees.

Japan. This Article should be moved to the Recommendation because it is difficult to adopt equal treatment for homeworkers who do not have the status of employee with other wage-earners because of the differences in the form of labour contracts, forms of employment, nature of work, and applicable laws and regulations.

NIKKEIREN. (Read as if Recommendation.) Promotion of equal treatment for homeworkers should be pursued, taking into account the special nature of homeworkers. Comparison with other wage-earners should not be made.

JTUC. Agrees. Disagrees with the above view of the Government. In view of an enlarged concept of workers, homeworkers should be considered similar to general

workers. The JTUC is striving to make the working conditions and rights of homeworkers as similar as possible to those of general workers.

Italy. Member States intending to ratify the Convention should give adequate attention to home work in their general occupational policies, with dialogue among the social partners.

CONFCOMMERCIO. Because of the objectively different conditions of home work vis-à-vis other types of work, it seems incongruous to establish an absolute principle of equal economic treatment between homeworkers and other workers.

Lebanon. Paragraph 1: In addition to taking account of special characteristics of home work, equality of treatment should also be applied in accordance with the provisions of the laws and regulations in force. Paragraph 2: The promotion of equality of treatment between homeworkers and other wage-earners means ensuring the equality required by national law, but paragraph 1 refers to taking into account the special characteristics of home work. Consequently, the treatment of homeworkers and other wage-earners may be different according to these characteristics.

Mongolia. Paragraph 2: A subparagraph should be added on hours of work and rest.

New Zealand. Paragraph 2 (a)-(e): Consistent with New Zealand law where homeworkers as employees are afforded the same protection and rights.

NZEF. Paragraph 2 (h): It is paradoxical that many workers become homeworkers during parental leave.

NZCTU. Paragraph 2 (d): Add "including access to appropriate holidays" to ensure homeworkers get adequate rest and recreational opportunities. Add further subparagraphs regarding rights to information and termination of employment.

Nicaragua. Agrees.

Norway. LO. Paragraph 2: The list in subparagraphs (a)-(h) is not complete, but merely gives examples of some important fields.

Portugal. Paragraph 2 (e): Agrees. It would be desirable to reinforce the programming character of the Article, considering that recourse to home work should not be discouraged. Subparagraph (f): Consider deleting as it seems excessive and could mean that the employer has to provide the training.

CIP. If the burden on enterprises is increased, they will abstain from having recourse to home work, and this will have negative consequences for those involved. The promotion of equality of treatment between homeworkers and other wage-earners should be pursued with much caution, and one should weigh the potentialities of this type of work. This provision does not take these aspects sufficiently into account.

UGT. Paragraph 1: Delete "where appropriate", which is contrary to the promotion of equality. Paragraph 2 (a): Add at the end of (a) "especially the right to collective bargaining and the right to act as workers' representatives". Opposed to drafting change in (e), as it is more restrictive. Add a new subparagraph, as follows: "protection against unjustified termination of employment".

Embroidery Workers of Madeira. Add a new subparagraph, as follows: "protection in case of termination of employment".

Sweden. Paragraph 2: The promotion of equal treatment should be related to the applicability of the following ILO instruments to homeworkers, which should be

referred to in subparagraphs (a)-(h): (a) Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); (b) Equal Remuneration Convention, 1951 (No. 100), and Discrimination (Employment and Occupation) Convention, 1958 (No. 111); (c) general instruments referring to the occupational environment; (d) Equal Remuneration Convention, 1951 (No. 100); (e) general social security instruments; (f) Human Resources Development Convention, 1975 (No. 142); (g) Minimum Age Convention, 1973 (No. 138); (h) Maternity Protection Convention (Revised), 1952 (No. 103).

TCO. Paragraph 2: The points in subparagraphs (a)-(h) should not be considered an exhaustive list, but should be taken as examples of important fields.

Switzerland. Paragraph 2 (e): This requirement is already being met under Swiss law; however, some problems of social security coverage still exist.

Swissfashion. This is too extensive and will not encourage employment. It would be more judicious to apply the principle of similar remuneration for similar work of the same value, taking into consideration the particular conditions of home work.

CP. Delete this Article. The two activities are of a different nature. The homeworker enjoys freedom in the organization which is counterbalanced by a relatively precarious situation. However, this situation is as fair as the contractual relationship between an employer and an employee in an enterprise. To guarantee homeworkers all rights to which a worker in an enterprise is entitled would, in fact, introduce an inequality of treatment.

UCAPS. This Article should be deleted or reduced to a minimum.

USS and VSA. Agrees.

Trinidad and Tobago. ECA. Agrees.

Tunisia. Agrees. Suggests adding the principle of non-discrimination on the basis of sex which should also apply to homeworkers.

United States. USCIB. The policy goals are unachievable in law and practice due to the nature of home work carried out at home alone and at disparate locations where the employer and homeworker may never meet. Paragraph 2: More typically, the standard of equal treatment applies to employees in the same occupational category of employees in terms of equal employment opportunities. Unaware of any other ILO instrument which carries forward the idea of equal treatment to a particular occupational category of employee. The implication is that homeworkers should somehow be more equal than other categories of employees.

Venezuela. Agrees, except for Paragraph 2 (e), which would require a revision of existing social security regulations.

Office commentary

Because the replies either agree with this Article or make suggestions for changes, which in the opinion of the Office are for the Conference to determine, no changes have been introduced.

Concerning paragraph 1, some governments and employers' organizations question the idea of equality of treatment of homeworkers with other workers, even those doing similar work in enterprises. Some argue it is impossible or inappropriate because of the different characteristics of home work and suggest deleting either or

both phrases on promoting equality and making comparisons with workers in enterprises. Some feel that the phrase "taking into account the special characteristics of home work" is inconsistent with equality, while others believe it might lead to better treatment for homeworkers. One trade union proposes replacing the term after "taking into account" with "conditions applicable to the same or similar type of work carried out in an enterprise". Thus such conditions would be taken into account first, and then "where applicable", the special characteristics of home work.

Several trade unions and one government suggest adding further subparagraphs to paragraph 2 on issues such as hours of work and rest, termination, superannuation, access to leave and holidays and rights to information. One government proposes deleting paragraph 2 altogether as too detailed, while some trade unions state that the list should not be considered complete, but as examples. Some governments allege there would be problems of implementation with various provisions. For example, one emphasizes difficulties with including safety and health because the homeworkers' environment could not be controlled by the employer. Another points out that equality could not be guaranteed for homeworkers in areas such as social security, for example, where thresholds based on hours of work preclude part-time workers from eligibility. One government thinks the inclusion of training is excessive, while another believes the provision on training should be expanded. One government feels that relevant ILO instruments should be referred to in subparagraphs (a) to (h).

Article 5

The national policy on home work shall be implemented by means of laws and regulations, collective agreements, arbitration awards or in any other appropriate manner consistent with national practice.

Observations on Article 5

Australia. ACTU. Agrees.

Barbados. BEC. No new legislation on home work should be required. Employment status should be limited to employed versus self-employed within the existing legislation, as appropriate.

Belgium. CNT. The national policy should be implemented in a flexible manner, taking into account the special characteristics of home work.

Canada. Agrees.

Finland. See reply under Article 4.

New Zealand. Agrees, if Convention is to be adopted.

NZEF. The inherent difficulties which the proposed Convention presents — particularly the difficulties of definition — may well operate to inhibit ratification.

Switzerland. Agrees.

UCAPS. The essential requirements of Articles 5 to 10 are fulfilled in Switzerland.

Office commentary

No changes have been suggested.

Article 6

National basic labour statistics shall include homeworkers.

Observations on Article 6

Argentina. Delete this Article. It would be an obstacle to ratification and implementation due to the difficulty in obtaining periodic, reliable and precise statistics on home work.

Australia. Would not pose an obstacle to ratification by Australia because information is already published on persons who usually work more hours at home than elsewhere in their main job or business. However, given the wide variety of practices around the world, the Convention should be as flexible as possible for wide ratification. This is to be revisited in the second discussion.

ACCI. Agrees.

ACTU. Agrees.

Austria. This would pose a temporary obstacle to ratification, since statistics currently take only traditional home work into account, and not the broader, services-related home work covered by the scope of the Convention.

Bahamas. Does not envisage any difficulty with this.

Barbados. BEC. Need to avoid double counting homeworkers already on the payroll of a company and already included in the labour force.

Belgium. Should be included in the proposed Recommendation.

Brazil. This is not an obstacle to ratification for Brazil. Once included in national statistics as economically active, homeworkers should be given an identity as a specific category of workers. Add at the end of the Article "differentiating them as a specific category of workers".

Canada. Agrees in principle, but although there are a number of national surveys on paid workers who work at home, the notions of the degree of autonomy and of economic independence are not yet entirely taken into account; furthermore, the surveys do not indicate either the nature of the employment relationship of the person working at home or if the person is self-employed. Thus, it is preferred that this provision be in a Recommendation. Should it be retained in a Convention, the words "to the extent possible" should be inserted before "include".

PSAC. If this is an obstacle to some governments, some flexibility could be built into the text, but the Article should not be deleted.

UNITE. This is a crucial provision, because improved statistics would make homeworkers visible and thus allow for ensuring protection of basic standards and improving their working conditions. The drafting is flexible enough for governments to implement.

Cyprus. This Article alone should not be an obstacle to ratification.

PEO. Agrees. Could not be an obstacle to ratification. Data on homeworkers can assist member States to formulate relevant policies, evaluate the magnitude of problems and address them, and plan ahead.

Czech Republic. Current statistics do not provide separate data on homeworkers, but homeworkers are included in totals concerning numbers of employees and wages. Special labour force inquiries refer only to status of employment and do not distinguish home work from other types. In case of ratification, it would be necessary to make appropriate changes to the present system, which would not necessarily be an obstacle to ratification.

CMCTU. Labour statistics should cover homeworkers.

Estonia. In principle, there is no objection, but there is no doubt it is very complicated to implement in practice. However, statistics are needed to comply with the general principles of the Convention and Recommendation. Estonia would like to support the idea that this provision would not be an obstacle to ratification. It is always possible to collect adequate data to a certain extent, recognizing that all statistics fall short in some areas.

Finland. While labour market surveys already include homeworkers, the basis for including them might have to be revised to distinguish between persons in an employment relationship and others working at home. It should be possible at the national level to determine the specific grounds for compiling statistics.

SAK. Statistics on homeworkers are important to make home work visible.

France. This does not constitute an obstacle to ratification. The Workers' members had announced that they would try to respond to the governments' concerns in the second discussion.

CFDT. Unless there are very strong arguments put forward by governments, it is useful to maintain this provision.

Germany. Such a provision should be reserved for the Recommendation. It should be sufficient if statistics on the employment of homeworkers are presented, but not also included in the national basic labour statistics. Many member States will have difficulty obtaining data on the extent of the employment of homeworkers in their countries. The expenditure incurred in collecting such data will present an impediment to ratification for a number of member States.

Greece. Given the difficulty in collecting all the data required under the regulations and possible difficulties of access to places where home work is carried out, this provision should be transferred to the Recommendation, especially in view of the requirements under Paragraphs 7 and 8 of the proposed Recommendation.

Hungary. Considering the small number of homeworkers in Hungary and the current regulation which limits excessive data collection — including that on

homeworkers — to enterprises employing at least 20 persons, an unreasonable burden would be placed on employers with at least ten employees; furthermore, the task would be unrealizable in the case of employers with less than ten employees. Inserting "in compliance with the national statistical reporting system" would eliminate the obstacle to ratification.

India. SEWA and Hind Mazdoor Sabha. The Article should be retained. There should be no problem for India to include homeworkers in labour statistics because, since 1991, there has been a question in the national census which captures homeworkers.

CITU. Agrees.

Italy. CGIL. It is important to maintain this Article.

Japan. When developing countries are taken into account, it is appropriate to include this provision in the proposed Convention.

NIKKEIREN. It is not clear on what scale surveys would have to be made. However, without identifying the actual circumstances of home work, it is impossible to improve conditions of homeworkers. Therefore, the provision should read that each member State may conduct its own survey with due regard to the actual situation of home work in the country.

JTUC-RENGO. In favour, but if the inclusion of this Article would impede ratification by developing countries, there should be a flexible response so that the provision could be temporarily included in the Recommendation.

Lebanon. In principle, this Article does not raise difficulties which would be an obstacle to ratification. But there is the question of whether it would be possible to obtain accurate statistics on homeworkers if the employer or homeworker was reluctant to provide the required information.

New Zealand. Agrees. Homeworkers are covered by labour statistics in New Zealand.

NZEF. Problems of definition may complicate the statistics-gathering process.

NZCTU. Agrees. A solid statistical base will be necessary to enable the implementation of the rest of the Convention.

Netherlands. It is very hard to draft a definition on home work that will be operational from a statistical point of view. This Article will only be acceptable if, for statistical purposes, a practicable distinction can be arrived at that remains within the context of the Convention.

Nicaragua. Agrees, as this is more flexible and better meets the needs of developing countries which have problems in maintaining and strengthening their systems of statistics.

Peru. This would permit the ILO to evaluate national practice in member States. At present, Peru does not have statistics on home work despite legislation regulating this type of work.

Portugal. Agrees. This does not present a difficulty for Portugal. Statistical information on home work benefits from relevant legislation that requires a register of homeworkers. Nevertheless, it is desirable to shift this provision to the Recommendation so as not to create difficulties for other countries.

Spain. The elaboration of reliable statistics on home work has always been a problem and could be a problem in the future. Suggests alternative drafting: "The national policy should, to the extent possible, give home work the same statistical treatment as the rest of the labour force".

Sweden. This should be discussed in connection with a revision of the Labour Statistics Convention, 1985 (No. 160).

TCO. This should be retained, because homeworkers are a large invisible group due to the absence of statistics in this field.

Switzerland. Switzerland does not incorporate homeworkers in employment statistics, but they are specifically mentioned in unemployment statistics. This provision should be sufficiently wide to permit member States to ratify the Convention. Insert at the beginning of the Article "As a whole,".

UCAPS. See comment under Article 5.

USS and VSA. It is indispensable that national labour statistics reflect the situation of homeworkers to enable the development of this market to be monitored. The expected rise in telework in the future and the fact that the Swiss Home Work Act does not take account of this modern form of home work, argue convincingly for including both traditional and modern forms of home work in Swiss labour statistics.

Thailand. Home work-related information should be included in national statistical services to establish the true extent and nature of home work and regulate it.

Trinidad and Tobago. ECA. Giving homeworkers basically the same rights as other workers in terms of equality of treatment, as provided for under Article 4, would mean that homeworkers were recognized as part of the labour force and should therefore be included in labour statistics.

Tunisia. It is necessary to include homeworkers in national basic labour statistics. To avoid this being an obstacle to ratification, add "as far as possible" after "shall".

United Kingdom. TUC. Agrees. Accurate labour statistics on the extent of home work are necessary if governments are to frame effective policies to give effect to the Convention, particularly for enforcement and inspection. Publication of accurate information would make home work more visible and help end its marginal status.

United States. USCIB. This underlines the principal problem with the instruments — that they are based on insefficient information and statistics. The broad definition of home work in Article 1 would make it impossible to gather meaningful statistics.

Venezuela. To comply with this provision, the inspectorate would have to verify whether employers of homeworkers are fulfilling their obligations to register as required under national legislation.

Office commentary

This provision was an amendment offered during the first discussion by the Workers' members and supported by the Employers' members to address the problem of insufficient statistics on home work. However, a number of Government members had indicated that it might be extremely difficult to implement, especially in developing countries. The Workers' Vice-Chairperson had announced that the Workers' members would try to meet these concerns during the second discussion.

In Report IV (1), the Office invited member States to indicate whether this provision would be an obstacle to ratification and, if so, for what reasons. Twenty-eight governments have commented on this provision. Slightly more than half feel that it would not be an obstacle to ratification for their country, or only a temporary one while their current systems were adapted to the new provisions. Some of these believe the provision is flexible enough to implement within the context of their national situations. Only a few governments state directly that it would be an obstacle to ratification. Others say the provision is only appropriate for the Recommendation or that problems of ratification and implementation could be avoided by adding "to the extent possible", "as far as possible", "in conformity with the national statistical reporting system", or "as a whole". Many of the Governments, especially those in developing countries, emphasize the need for statistics on home work and believe that this provision could assist to that end.

The reasons given for possible difficulties in implementation or as an obstacle to ratification include the following: where statistics are now collected on home work, modifications would be needed because the definitions are not the same — for example, only traditional forms of home work might be included and not services-related home work, or the nature of the employment relationship of the person working at home might not indicated; home work is not included in all labour statistics, perhaps only in unemployment figures; statistics are not yet collected on home work and it would be difficult and too expensive to collect periodic, reliable and precise statistics; extensive collection of data is limited to larger enterprises; the broad definition would make the collection of meaningful statistics on home work difficult or impossible; there could be difficulty in having access to places where home work is carried out.

One Government feels that this issue should be discussed in connection with a revision of the Labour Statistics Convention, 1985 (No. 160). The Office draws the attention of the Conference to the contents of Convention No. 160, which refers to an ensemble of subjects to be included in basic labour statistics. Article 1 is flexible in referring to basic labour statistics, "which shall be progressively expanded in accordance with . . . [the] resources [of the Member] to cover the following subjects". The Office has slightly modified Article 6 by deleting the word "National" to conform with Convention No. 160, which implies that statistics may also be compiled at regional, provincial and other levels.

Article 7

National laws and regulations shall establish conditions under which, for reasons of safety and health, certain types of work and the use of certain substances may be prohibited in home work.

Observations on Article 7

Australia. ACTU. Agrees.

Brazil. Insert "equipment and" before substances.

Canada. Agrees.

New Zealand. Agrees.

Sweden. Consistent with national law. Provisions allowing for the prohibition of certain working procedures and methods, technical devices or dangerous substances, as well as measures such as injunction or prohibition to secure compliance with the law, also apply to home work.

Switzerland. Swiss legal prescriptions are consistent with this Article.

Venezuela. Agrees.

Office commentary

The few comments on this Article agree with it or state that it is consistent with national law. One Government suggested inserting "equipment and" before certain substances. However, the reference to certain types of work should be broad enough to allow restricting types of work involving equipment that should not be used in home work.

Article 8

National laws and regulations shall, where appropriate, determine whether and under which conditions the employer may use intermediaries.

Observations on Article 8

Australia. Supports in principle alternative (a) proposed by the Office. However, further consideration is needed because it raises questions of practical application in Australia.

ACCI. Supports alternative (a). Alternative (b) is too restrictive and unworkable. The term intermediary is not defined, thus how could national law define their status?

ACTU. Supports alternative (b).

Austria. Favours the text as is. If need be, alternative (a) could be supported, but alternative (b) is too detailed.

BAK. Favours alternative (b). The member States' wish to be left to take the basic decision of whether or not to allow the use of intermediaries should be respected.

Nonetheless, if permission is granted, it is vital to regulate the status, requirements and other conditions under which intermediaries may be used.

Bahamas. Favours alternative (b). Since the use of intermediaries in some types of home work opens the way to abuse and hardship for the worker, the role, obligation, responsibility and liability of intermediaries should be clearly defined.

Barbados. BEC. The law should not interfere in the relationship between parties, except as provided in existing contract, tort or criminal law.

Belgium. Alternative (a) is acceptable, but replace the words "is not prohibited" by "is permitted". The authorization required could be explicit or implicit, depending on the national legal system.

CNT. No matter what alternative is adopted, it is important to ensure that homeworkers in this situation are covered by the instruments.

Brazil. Prefers alternative (a) because it is clearer and less restrictive.

CNC. Delete this Article, as well as all other references to intermediaries.

Bulgaria. It is unacceptable to apply the concept of intermediaries because it is not developed within national legislation, thus proposed alternative (b) is supported.

Canada. Agrees with current wording and, in particular, retaining the words "where appropriate". If the current wording is not retained, alternative (b) would be acceptable, provided that "or court decisions" is inserted after "national law". Without this change, Canada would have serious reservations because it might impose obligations on national and provincial governments to determine through legislation whether and under what conditions the employer may use intermediaries.

CEC. The term "intermediary" is used, but is not defined or given a legal status. Removing the references altogether and letting national laws and regulations determine the conditions under which intermediaries can operate would remove one element of confusion.

PSAC. Proposes the following alternative: "If intermediaries exist and are allowed to operate, national laws and regulations must define their status, the conditions under which they may be used and specify the respective responsibilities of employers and intermediaries towards homeworkers". Disagrees with the suggestion in the Office commentary that, if an alternative text is accepted, no further reference to intermediary need be made.

UNITE. Prefers alternative (b) because it ensures that the issue is addressed and allows sufficient flexibility for member States. Opposes deleting references to intermediary in Paragraphs 6 and 8 of the Recommendation.

Colombia. ANDI. The term "intermediary" is mentioned eight times, yet the term is not defined and no legal status is given. This could lead to serious confusion.

Congo. Opts for alternative (b), which is more explicit and precise concerning the use of intermediaries.

Croatia. Opposes alternatives. The current text is preferred.

Cyprus. Supports alternative (a). If it is not accepted, the text should remain. Alternative (b) is not acceptable, as it makes the enactment of legislation a precondition for the use of intermediaries.

PEO. Alternative text (a) is accepted and, therefore, no reference should be made to intermediaries. Where they are allowed, their responsibilities must be defined by national law or regulations.

Czech Republic. Favours alternative (b).

CMCTU. The text is not clear and could lead to problems in the development of corresponding national legislation, thereby complicating adoption of the Convention. Thus, deletion of this Article and references to intermediaries in the Recommendation is preferred.

Confederation of Arts and Culture. Favours alternative (a) since it leaves it to member States to make corresponding provisions in national law, and is consistent with the Constitutional principle that actions are permitted if not prohibited by law. Alternative (b) could limit contractual freedom.

Estonia. Member States should regulate the question of intermediaries through their national laws and regulations. Alternative (a) is preferred.

Fiji. FTUC. To ensure that employers cannot evade their responsibilities, add the following clause: "The intermediary, if any, should be made jointly and severally liable with the employer for payment of the remuneration due to homeworkers, in accordance with national law and practice". (From Paragraph 19 of the Recommendation, with suggested rephrasing of the Office.)

Finland. Prefers the Article as it is to ensure that no legislative provisions on intermediaries would be required in countries where intermediaries in home work do not exist.

LTK and TT. The concept of intermediary is not known or needed in Finland.

SAK. Alternative (a) seems functional.

France. Prefers alternative (a).

CNPF. Opposes the present formulation which seems to pose the general principle of prohibiting the use of intermediaries, except under certain conditions. At the most, could support that recourse to an intermediary is prohibited as long as the cases and conditions under which they can be used are not fixed by national legislation.

CFDT. Prefers alternative (b), as it leaves member States entirely free to find their own solution to the problem while ensuring that the question is dealt with.

Germany. The proposed alternatives are too detailed, thus prefers current text. It would be even better if the instruments did not refer to intermediaries.

DGB. Supports alternative (b).

Greece. Agrees to alternative (b).

Hungary. It is unnecessary to have provisions on intermediaries because there are numerous problems with a possible definition. For example, naming the person who is a contact between the employer and the worker an intermediary would create problems if it means employment agencies, for example. The agency is only responsible for creating contact between an employer and a person looking for a job and thus has no responsibility for the employers' or workers' behaviour, since the legal relationship is created between the employer and worker. If an intermediary employs a homeworker directly, the intermediary is responsible for the homeworker; however, if the intermediary acts as an agent of the employer and on the employer's

behalf, the legal relation is between the employer and homeworker and the intermediary has no responsibility toward the homeworker. At the most, the current text should remain.

India. SEWA and Hind Mazdoor Sabha. Retain the Article as is. The definition of intermediary (contractor) exists in various Indian laws, and goes far beyond and is more detailed than the proposed text, so there should be no problem in adopting the text.

CITU. Agrees to alternative (b).

Italy. The definition of intermediary is not clear. The discretionary power left to national legislation on the possibility of using intermediaries is considerable.

CGIL. Prefers alternative (b).

CONFCOMMERCIO. Neither the definition of intermediary nor the legal relationship between an intermediary, entrepreneur and homeworker are clear. Alternative (a) is preferred because it appears more flexible and does not introduce an *a priori* prohibition from which there can only be a departure under specific conditions.

Japan. The text is more flexible and preferable than the proposed alternatives. Between the alternatives, alternative (a) would be easier to accept.

NIKKEIREN. Intermediaries are indispensable for home work and a complicated provision should not be included on their use. Alternative (a) is preferred.

JTUC-RENGO. Prefers alternative (a), but if the original text is more flexible and acceptable as a whole, it can be accepted.

Lebanon. Agrees to alternative (b). Consequently there is no need to refer further to intermediaries in the proposed Convention and Recommendation because the definition of their status and responsibilities will be left to national law. Paragraph 19, however, of the proposed Recommendation may be retained.

Netherlands. Opposes both alternatives. A text that implies an explicit definition of responsibilities and liabilities between the intermediary, and the natural or legal person that makes use of an intermediary, might be an impediment for ratification of the Convention. National home work legislation does not explicitly prescribe conditions or responsibilities of intermediaries nor distinguish them from those of the employer (natural or legal person that makes use of an intermediary to get the job done). The Netherlands decree on safety and health for homeworkers defines employer in such a way as to include the intermediary — thus intermediaries are covered, but not explicitly.

New Zealand. Prefers alternative (a) because the relationship and protection for employees have been established by the common law.

NZEF. The term "intermediaries" is open to very broad interpretation depending on national circumstances. Prefers no reference to intermediaries.

NZCTU. The Convention should include a definition of "intermediary" to the effect that it covers any person engaged in the process of giving out home work who is neither the employer nor the homeworker. This would focus attention on the economic realities of the relationship. It should be established that there is some economic entity behind the intermediary that constitutes the real "employer". Prefers alternative (b), with deletion of the word "respective". A provision making it clear that employers and

intermediaries are jointly and severally liable for the homeworker should be included in the Convention.

Nicaragua. Supports alternative (a). Also agrees to deleting all references to intermediaries, except in Paragraph 19 of the proposed Recommendation.

Norway. Norway has no "intermediaries". Could consider alternative (b).

LO. Supports alternative (b).

Peru. Prefers alternative (b).

Philippines. There must first be a definition of "intermediary". If the term includes persons working for or representing the interests of the employer (as is the case under Philippine law reported under Article 1 (b)), then alternative (b) is acceptable and consistent with provisions which define status, conditions for use and respective responsibilities of employers, contractors and subcontractors toward homeworkers.

Portugal. Accepts alternative (a), which applies better to the cases where national legislation should regulate the activities and responsibilities of intermediaries. Alternative (b) restricts excessively their use.

CIP. Intermediaries are mentioned several times, but the term is not defined. There are different types of intermediaries. In some cases, they are homeworkers who act as such vis-à-vis other homeworkers, while in others cases, they are employees of the enterprise that gives out work. For this reason, it is absolutely unacceptable that they be held liable as foreseen under Paragraph 19 of the proposed Recommendation. It is insufficient to limit through national legislation the cases and conditions for the use of intermediaries in this area.

UGT. Prefers alternative (b) as it meets the concerns of the Union. Add new paragraph as follows: "National legislation should ensure that the employer and the intermediary, if any, should be jointly and severally liable for payment of remuneration and other financial benefits due to the homeworker".

Slovakia. Supports alternative (a). New legislation will be required.

Sweden. See under Article 1 (b).

TCO. Prefers alternative (b), under which member States are at liberty to devise their own solutions to the problem of intermediaries.

Spain. Prefers alternative (b).

Switzerland. For home work, other than in industry and handicrafts, Swiss legislation does not prohibit the use of intermediaries, nor does it contain any specific provisions in this respect. Neither alternative (a) nor (b) would be consistent with Swiss legislation. Alternative (b) would meet better the concerns expressed during the first discussion. It would require an adaptation of Swiss law for the rare cases where an employer uses an intermediary for home work that is neither industrial nor connected with handicrafts.

UCAPS and CP. Delete this Article, as the notion of intermediary is not clear.

USS and VSA. Favours proposed alternative (a).

Thailand. Supports alternative (b) to protect homeworkers and to clarify liability between employers and intermediaries. The status and conditions of intermediaries

should be restricted and defined solely by national laws. Unless the respective responsibilities of employers and intermediaries toward homeworkers are specified, employers might evade responsibility and intermediaries might cheat homeworkers.

Trinidad and Tobago. ECA. Both proposed alternative texts state that intermediaries can be used in home work, but alternative (b) gives more leverage to the government in terms of defining exactly what is expected if there is recourse to an intermediary.

Tunisia. Alternative (a) should be adopted.

United Kingdom. TUC. Supports alternative (b), as it would ensure that the use of intermediaries is effectively regulated. However, later references to intermediaries in Paragraphs 6 and 8 of the Recommendation should remain, since this Article provides for the possibility of their existence.

United States. No alternative should be considered until a clear definition of "intermediary" is developed.

USCIB. The text and Office alternatives do not define "intermediary", thus the use of the term is unclear. Alternative (a) is defective because it would require countries which do not prohibit intermediaries because there is no practice of them to enact legislation or adopt regulations on the use and responsibilities of intermediaries.

UNITE. Supports alternative (b). It allows full freedom to member States to fashion their own solution to the problem of intermediaries, while ensuring that member States address the issue.

Venezuela. Prefers alternative (b).

Zimbabwe. Supports alternative (a) and (b), since they give member States power to decide whether or not intermediaries should be employed.

Office commentary

The issue of intermediaries remains one of the more controversial in the proposed instruments. During the first discussion, Point 10 of the proposed Conclusions was amended to insert "where appropriate" so that national laws and regulations, where appropriate, would determine whether and under which conditions the employer could use intermediaries. This was to ensure that countries which prohibited intermediaries or did not have the concept would be spared from having to take further action. However, its placement in the text leaves the determination open to member States as to whether it is appropriate to legislate on intermediaries, thereby undermining the purpose of the provision. In view of this, the Office invited member States to comment on two possible alternative texts to this Article, referred to as alternatives (a) and (b) in Report IV (1):

Alternative (a)

Where the use of intermediaries in home work is not prohibited, national laws and regulations shall determine the conditions under which the employer may use them and shall define their responsibilities.

Alternative (b)

The use of intermediaries may be permitted in home work only if national law has defined their status, determined the conditions under which they may be used and specified the respective responsibilities of employers and intermediaries towards homeworkers.

A majority of replies favour one of the alternatives over the text, but between the two alternatives, government replies are evenly split. One government would not mention intermediary at all, while another believes that there should be no discussion until intermediary is defined. The majority of workers' organizations support alternative (b). Few employers' organizations have commented, but there is a slight preference for alternative (a), with almost equal preference for deleting the Article. Many of the government replies agree with the basic approach in the proposed instruments of leaving the definition and regulation of intermediaries to national law. Taking into account the various views, the Office has revised Article 8 to try to meet the concerns of those who favour one of the alternatives. It reads: "Where the use of intermediaries in home work is permitted, the conditions under which the employer may use them and their respective responsibilities shall be determined by laws and regulations or by court decisions, in accordance with national practice". The provision would not apply where the use of intermediaries is prohibited or where they do not exist.

A major criticism from some governments and employers' organizations is that "intermediary" is not defined; they suggest that its use in the instruments will cause confusion. However, because the practice concerning intermediaries is varied, it does not appear helpful to provide a more specific definition in the proposed instruments. In some countries, a subcontractor would be considered the employer, while in others the subcontractor might be an intermediary or an employer only for certain purposes. Thus the same party can be treated differently by law in different countries. Many countries do not have the concept of intermediary or do not allow them in home work. In other countries, the law on agency determines the responsibilities of an employer as a principal and of those acting on behalf of the employer. Employees and homeworkers would not be liable for acts of the employer when acting on behalf of the employer, for example, in delivering goods or assignments. The general feeling during the first discussion seemed to be that the Convention could not go so far as to prohibit the use of intermediaries, but that homeworkers should be protected from the problems created by their use. Further, their use should be acknowledged so that those who receive work through intermediaries would be covered. Article 8 thus makes it clear that where intermediaries are permitted, national law must address the conditions under which they can be used and the responsibilities of employers and intermediaries toward homeworkers. References in the proposed instruments will thus be in the context of national law on intermediaries and what is meant by an intermediary in the specific legal system. Several references to intermediaries remain in the proposed Recommendation as examples of how responsibility could be assigned.

Article 9

1. A system of inspection consistent with national law and practice shall ensure compliance with the laws and regulations applicable to home work.

2. Adequate remedies, including penalties, for violation of these laws and regulations shall be provided for and effectively applied.

Observations on Article 9

Australia. Agrees. Further consideration will be given to concerns about the privacy implications before the second discussion.

ACCI. Agrees.

ACTU. Agrees.

Austria. Paragraph 1: It should be made clear that any rights established under laws and regulations pertaining to home work which fall under court jurisdiction do not need to be doubly monitored by a state system of inspection. A sentence should be inserted in the Article that, in the event of national law or practice (respect for privacy) prohibiting an inspection of the homeworker's residence or other private premises, suitable measures need to be taken to ensure that the implementation of regulations applicable to home work can be monitored.

BAK. Paragraph 1: It is understandable and acceptable that national laws on privacy must be respected. However, it is of concern that since home work is typically carried out in the home of the worker, this provision might be used as a pretext for setting up a system of inspection incapable of fulfilling any useful supervisory role. Therefore, the concept of a system of inspection should be qualified by inserting "efficient".

Bahamas. Agrees.

Barbados. BEC. Paragraph 1: This provision is impractical and perhaps unconstitutional. Only in limited situations can the privacy of the home be invaded.

Belgium. CNT. Home work must be totally controllable as, for example, concerning the identity of homeworkers. On the other hand, the additional administrative obligations which may arise from the control of home work must stay within reasonable limits to guarantee a flexible status and to avoid making these obligations inapplicable in practice, which could tilt the balance of the system towards clandestine work.

Brazil. Paragraph 1: The reference to national law and practice is unnecessary. The paragraph should read: "The system of labour inspection shall ensure compliance with the laws and regulations applicable to home work".

CNI. Delete paragraph 2.

CNC. Delete this Article. See comments under Article 4 above.

Canada. Paragraph 1: Agrees, provided "consistent with national law and practice" is retained to ensure that types of inspections, such as audit compliance, spot checks and periodic inspections, would satisfy the obligations of the Convention.

CEC. Paragraph 1: The first discussion made it clear that a balance would need to be struck between the competing interests of health and safety, on the one hand, and

respect for personal privacy, on the other. Governments may find practical issues interfere with implementing this provision.

Colombia. Paragraph 1: A system of inspection would encounter difficulties in practice with regard to access to places where home work is carried out because the inviolability of the home and fundamental rights of persons living there are constitutionally guaranteed. It would require special attributions which are not given to the labour administration authorities under national legislation.

ANDI. Paragraph 1: The right to privacy would be subordinated to public safety. Labour inspection would not be compatible with national legislation concerning confidentiality. This situation would bring about innumerable difficulties in practice.

Cyprus. Paragraph 1: Agrees.

PEO. Paragraph 1: Agrees.

Czech Republic. Confederation of Industry and Transport. Paragraph 1: A balance should be sought between the privacy of homeworkers and the implementation of occupational safety and health requirements. For practical purposes, there could be problems in the country connected with supervision by labour inspectors.

Estonia. Agrees.

Finland. Agrees.

France. CNPF. Paragraph 2: The words "and effectively applied" are inacceptable.

CFDT. Agrees.

Greece. Agrees. Paragraph 1: Suggests that "and legislation concerning respect for privacy", as in Paragraph 9 of the proposed Recommendation, be inserted.

Honduras. Agrees.

Hungary. Though national law does not yet apply systems of labour safety and inspection to rules on homeworkers, draft legislation would extend inspection and provide for penalties in the event of non-compliance.

India. CITU. Agrees. Paragraph 1: In addition, the government should ensure that inspectors visit the places as and when required.

Italy. Paragraph 1: This does not take due account of legislation of certain countries — including Italy — that prohibits labour inspection at the private homes of workers, even on grounds of health and safety, given the absolute principle of the "inviolability" of the home.

CONFINDUSTRIA. Paragraph 1: Does not sufficiently protect the privacy of the homeworker. There needs to be a balance between health and safety and privacy interests, otherwise ratification will be difficult.

CONFCOMMERCIO. Precise reference should be made to the competent authority, namely the one having specific competence in controlling the application of labour law.

Lebanon. Paragraph 1: Agrees.

Malaysia. MEF. Paragraph 1: Governments will need to consider the practical issues of implementation, such as striking a balance between the competing interests

of health and safety and respect for personal privacy. Entries by labour inspectors might not be compatible with national law on privacy.

New Zealand. Paragraph 1: Types of enforcement of entitlements to employment-related conditions should be consistent with national practice. Paragraph 2: Agrees that national laws on employment, including home work, should be enforceable and that adequate penalties be provided.

NZEF. Paragraph 1: This would be a gross breach of the rights of the individual employee who is likely to have opted for home work to accommodate domestic responsibilities.

Nicaragua. Paragraph 1: Agrees.

Norway. Paragraph 1: Wording is flexible enough, even though Norway does not have such a system of inspection.

LO. Paragraph 2: Points out that it is the employer, not the individual worker, who should be punished for possible infringements of the provisions.

Portugal. Agrees.

CIP. Paragraph 1: The adoption of a system of inspection could raise delicate problems, particularly with regard to compatibility between interests of security and personal privacy. This is just one problem that might arise in the implementation of this provision.

Spain. Paragraph 1: Agrees, considering that fundamental rights, such as the inviolability of the home and protection of privacy, will be guaranteed through national law.

Sweden. Concerning working conditions, provisions on the supervision of compliance with the Swedish Work Environment Act also apply to home work.

Switzerland. Agrees.

CP and UCAPS. A system of inspection and repression of abuses should be envisaged, but in a limited framework. The flexibility necessary for this type of work should be preserved; it guarantees employment and makes the international instrument credible. Questions the good of enacting constraining provisions in certain countries, when other countries, abroad but also in Europe, may sign and ratify them but do not have the means nor the political will to implement them.

UCAPS. Paragraph 1: This Article poses the problem of respect for personal privacy. It also raises practical problems, such as the choice of the time of inspection, considering the flexibility of working hours of this type of work. It concerns especially the governments.

USS and VSA. Agrees.

Trinidad and Tobago. ECA. Agrees.

Tunisia. Paragraph 1: Agrees.

United Kingdom. Paragraph 1: There are many practical problems compared with standard forms of inspection, such as in balancing the competing interests of health and safety and respect for personal privacy, and the time for carrying out inspections due to the flexibility in how and when home work is done.

TUC. Paragraph 1: Agrees. Existing institutions, if adequately resourced, could undertake the enforcement and inspection function.

United States. Agrees.

Venezuela. Agrees.

Office commentary

No changes have been introduced.

Concerning paragraph 1, the majority of replies agree with the provision. Some replies, however, state that all home inspection would or should be precluded by restrictions on invading the privacy of the home. Some assume that home inspection is the only type of inspection that could be carried out. As pointed out during the first discussion, this provision does not designate or preclude specific measures, but requires that there be a system of inspection that can ensure compliance with laws and regulations applicable to home work. In some countries, inspections in the home might be carried out with advance notice and the consent of the worker. An inspection might also be made subject to there being reasonable grounds for suspicion of a dangerous or illegal activity — or at the request of the worker. In addition, audits of records, interviews of workers and employers, spot checks of delivery of work, and the like, can be part of an inspection system. The phrase "consistent with national law and practice" is meant not only to meet the concern that provisions such as those protecting privacy of the home are honoured, but also recognizes the differences in inspection systems in member States and the desire of some governments to avoid having to adopt new or separate inspection systems for home work. One government, however, suggests deleting the phrase as unnecessary, while another insists that such a phrase must be retained to ensure that various types of inspections, such as audit compliance and spot checks, would satisfy the obligations of the Convention. Several employers' organizations believe that there would be practical difficulties in striking a balance between the competing interests of health and safety and respect for personal privacy of the homeworker when work is carried out at home. As the Office explained during the first discussion, this balance will be struck under national law and practice.

Very few comments are relevant to paragraph 2, although one employers' organization objects to "and effectively applied", and two others suggest deleting the paragraph.

Article 10

This Convention does not affect more favourable provisions applicable to homeworkers under other international labour Conventions.

Observations on Article 10

Brazil. Should consider listing the Conventions most related to the question of home work.

Canada. Agrees.

New Zealand. Agrees.

NZCTU. Agrees.

Sweden. This Article has the same wording as Article 2 of the Part-Time Work Convention, 1994 (No. 175). The Preamble to that Convention, however, makes

reference to general instruments. Whether or not it serves the same purpose in the present case will depend on whether the corresponding reference is included in the Preamble or in Article 4. (See comments under Article 4.)

Venezuela. Agrees.

Office commentary

No changes have been introduced. Two governments suggest listing the Conventions most related to home work; and one of these feels that they should be in the Preamble or incorporated in Article 4.

Observations on the proposed Recommendation concerning home work[1]

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 83rd Session on 4 June 1996,

Having decided upon the adoption of certain proposals with regard to home work, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Home Work Convention, 1996;

adopts this day of June of the year one thousand nine hundred and ninety-six the following Recommendation, which may be cited as the Home Work Recommendation, 1996:

1. The provisions of this Recommendation should be considered in conjunction with those of the Home Work Convention, 1996 (hereafter referred to as "the Convention").

Observations on Paragraph 1

Canada. Agrees.

Lebanon. The phrase "in conjunction with" should not be interpreted, in any case, as meaning that the text of the Recommendation would automatically be adopted if the Convention is ratified, because the concept of a Recommendation is that it is a framework for guidance only.

Office commentary

Although only one Government raises a problem with this Paragraph, the Office considers that it is unnecessary, given that the Preamble already states that the Recommendation supplements the Home Work Convention and that the definitions are repeated in the Recommendation. To avoid possible confusion and to advance the

[1] The observations are preceded by the relevant texts as given in the proposed Recommendation set out in Report IV (1).

discussion, the Office has deleted this Paragraph. The numbering of the subsequent Paragraphs has been changed accordingly.

I. DEFINITIONS AND SCOPE OF APPLICATION

2. For the purposes of this Recommendation:

(a) the term "home work" means work carried out by a person, to be referred to as a homeworker,

(i) in his or her home or in other premises of his or her own choice, other than the workplace of the employer;

(ii) for remuneration;

(iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used,

as long as this person does not have the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

(b) the term "employer" means a person, natural or legal, who, either directly or through an intermediary, gives out home work.

Observations on Paragraph 2

Australia. See comments under Article 1 of the proposed Convention.
ACCI. Opposes.

Austria. See comments under Article 1.

Barbados. BEC. This does not help with the interpretation of "homeworker".

Brazil. See comments under Article 1.

Canada. See comments under Article 1.

Cyprus. See comments under Article 1.

Czech Republic. See comments under Article 1.

Estonia. See comments under Article 1.

Germany. BDA. This definition is unacceptable because it does not take account of specific characteristics of national law. German law makes a strict distinction between homeworkers and workers in an enterprise. (See comments of German government under Article 1.) Insert the following: "Home work is an activity which is carried out . . . in gainful employment, i.e. as an activity undertaken for a certain length of time and intended as a means of livelihood. . . . having been commissioned by an employer".

Greece. Agrees. See comments under Article 1.

India. SEWA and Hind Mazdoor Sabha. Agree to present text.

Lebanon. The definitions in the Recommendation should be the same as in the Convention.

New Zealand. See comments under Article 1.

Nicaragua. Agrees.

Portugal. See comments under Article 1.

Spain. See comments under Article 1.

Thailand. See comments under Article 1.

Tunisia. See comments under Article 1.

United States. USCIB and UNITE. See comments under Article 1.

Office commentary

The observations on the definition of the terms "home work" and "employer" are commented on under Article 1 of the proposed Convention. The comments made and the change introduced in subparagraph (b) of that Article apply equally to this Paragraph.

3. This Recommendation applies to all persons carrying out home work as defined under clause (a) of Paragraph 2.

Observations on Paragraph 3

Canada. Agrees

New Zealand. See under Article 1 of the proposed Convention.

Office commentary

The text of this Paragraph is submitted unchanged.

II. General provisions

4. (1) Each Member should, according to national law and practice, designate an authority entrusted with the formulation and implementation of the national policy on home work referred to in Article 3 of the Convention, making use, as far as possible, of bodies of a tripartite nature.

(2) In the absence of organizations concerned with homeworkers or organizations of employers of homeworkers, the authority referred to in subparagraph (1) should make suitable arrangements to permit these workers and employers to express their opinions on the national policy on home work and on the measures adopted to implement it.

Observations on Paragraph 4[1]

Australia. (Qu. 1) Does not consider it necessary to add "or authorities" because "national" is a collective term which makes no assumptions about the internal distribution of authority within a federal state. However, it could serve to make it clear that each member State could either establish an appropriate mechanism, or provide greater scope for existing arrangements. (Qu. 2) No. The stipulation of a single body limits member States in deciding upon a mechanism most appropriate to their own circumstances and may impose additional costs where adequate alternatives currently exist. (Qu. 3) The present formulation is compatible with current Australian government practice.

ACCI. (Qu. 1) Yes.

ACTU. (Qu. 1) Yes, it is in line with the current situation in Australia. (Qu. 2) No. This is not at present the case for other workers.

Austria. (Qu. 1) Yes. If national policy on home work is to be implemented in the relevant policy areas, it is clear that different authorities would be needed. (Qu. 2) No. This would conflict with federal state systems that make a clear distinction between the competencies of states and the federal government. (Qu. 3) Suggests separate sentence as follows: "Where appropriate, tripartite bodies should be involved in the formulation and implementation of the national policy".

BAK. (Qu. 2) The existence of a central authority with a coordinating role appears important in federal states in order to prevent a fragmentation of the policy on home work. (Qu. 3) This should be retained. Coordinating policy with representatives of workers and employers promotes prosperity and harmonious labour relations.

Bahamas. (Qu. 1) Yes. (Qu. 2) Yes. (Qu. 3) Tripartite bodies should be referred to in a separate sentence. They should be used in a consultative capacity relative to the formulation and implementation of laws and/or regulations that will impact at a national or regional level.

Barbados. BEC. Subparagraph (1): This would result in additional and unnecessary administrative and related costs.

Belgium. (Qu. 1) Yes. (Qu. 2) No. (Qu. 3) Attention is drawn to the fact that in certain countries there are no tripartite bodies as such, but only bipartite organizations on which employers and workers are represented.

Brazil. The present text does not present any difficulties of comprehension. (Qu. 1) No objection, but "an authority" could be understood to be a group of public entities entrusted with the formulation and implementation of the national policy working together each in its field of competence in a coordinated manner. (Qu. 2) Yes, this could be the Ministry of Labour. (Qu. 3) The Recommendation should promote tripartite participation in the formulation and implementation of the national policy. It is self-evident that the national authority would not give up certain areas of its competence which belong strictly to the State.

[1] In Report IV (1) (p. 7), the Office invites member States to comment on three questions (hereinafter referred to as Qu. 1, Qu. 2 and Qu. 3) of which the full text is given in the Office commentary below.

Bulgaria. The central authority should determine the general strategy, which should be implemented in coordination with the local authorities. Tripartism is only a form of cooperation.

Canada. (Qu. 1) Yes. In a given jurisdiction more than one competent authority may be involved in formulating or implementing the policy. Subparagraph (2): Agrees.

UNITE. (Qu. 3) Retain reference to tripartite bodies. They are often more successful in ensuring compliance with legislation than the competent authorities alone.

Croatia. It is not necessary to designate a separate tripartite body which would deal only with homeworkers. They could be adequately represented by existing bodies. The policy on homeworkers should be part of the overall national employment policy.

Cyprus. (Qu. 1) No. (Qu. 2) Yes. (Qu. 3) Yes. It is not clear whether the role of the tripartite bodies goes beyond consultation. The present wording might be interpreted to mean that these bodies should be used to designate the authority and not to formulate and implement the policy. In view of the consultation foreseen under Article 3, this reference to tripartite bodies could be deleted.

PEO. Agrees to present text.

Czech Republic. (Qu. 1) Yes. (Qu. 2) No. (Qu. 3) Tripartite bodies need not be expressly mentioned.

Estonia. (Qu. 1) It should read "designate authorities". (Qu. 2) Yes. (Qu. 3) The reference to tripartite bodies is not indispensable. Their role can be only consultative as foreseen in the proposed Convention. The formulation of the Paragraph is adequate.

Finland. (Qu. 1) A more flexible formulation seems better. (Qu. 3) Tripartite bodies could be referred to in a second sentence. Regulations on working conditions are drafted in consultation with tripartite organizations; however, the ultimate responsibility lies with the government.

France. The present text is sufficient.

CNPF. Contests the present formulation which seems to call for the designation of a national authority especially for home work. Such responsibilities often involve authorities of different areas and at different levels.

CFDT. The reference to bodies of a tripartite nature should be maintained, including with the proposed amendment. Maintaining this provision does not diminish in any way the primary responsibility which remains with governments.

Germany. (Qu. 1) Yes. (Qu. 3) Delete reference to tripartite bodies. Aspects of policy formulation and implementation are the responsibility of governments.

Greece. Prefers the present text. However, the decisions of the bodies referred to in subparagraph (1) should be of a advisory nature.

Hungary. (Qu. 1) No. The national policy on home work is an integral part of employment policy; thus the home work policy and its instruments are under the authority of the responsible minister. It is not necessary to appoint a separate authority.

India. SEWA and Hind Mazdoor Sabha. (Qu. 3) New and flexible mechanisms are needed to implement laws in the informal sector, where workers are dispersed, unorganized and outside a regular employer-employee relationship. As bodies of a tripartite nature respond to this need, it is important to retain this reference. The authority itself may be of a tripartite nature. The concept of tripartite mechanisms should be extended to the Convention.

Italy. CONFCOMMERCIO. It is not clear whether a special authority has to be created for the formulation and implementation of the national policy on home work. If there has to be a special authority, this would be totally unacceptable. Bodies of a tripartite nature should always be consulted on all important matters concerning home work.

Japan. JTUC-RENGO. (Qu. 1) Yes.

ZENROREN. These provisions should be included in the proposed Convention.

Lebanon. (Qu. 1) Yes. (Qu. 3) Delete the phrase "making use, as far as possible, of bodies of tripartite nature", as this may not be consistent with national laws and practice, and such bodies may not exist for other forms of work. Subparagraph (2): Replace "should" by "may" (in the third line). The term "suitable arrangements" needs clarification.

Netherlands. (Qu. 1) Yes. (Qu. 2) Yes. (Qu. 3) Yes, in a separate sentence to give them an advisory role. Once a policy has been developed, if necessary after tripartite consultation, part of its implementation could be left to the social partners to deal with.

New Zealand. NZEF. There is no need either for a specific authority or a reference to tripartite bodies, if it is accepted that homeworkers come under the aegis of general industrial law.

NZCTU. (Qu. 1) Yes. (Qu. 3) Agrees to retain the reference to tripartite bodies.

Nicaragua. (Qu. 1) No. (Qu. 3) Delete the reference to tripartite bodies. The relationship should not go beyond consultation foreseen under Article 3 of the proposed Convention.

Philippines. The "authority" referred to in this Paragraph is already well defined under the Philippine legal system. The Department of Labor and Employment drafts and implements policies relating to the labour sector and conducts consultations with the most representative organizations of labour and management.

Portugal. (Qu. 1) Yes, it is suitable for countries with autonomous regions such as Portugal. (Qu. 2) No, it could be in conflict with the constitution of some of the federal states. (Qu. 3) The present text is acceptable.

CIP. Subparagraph (1) is unnecessary considering the content of Article 3 of the proposed Convention.

Embroidery Workers of Madeira: Delete subparagraph (2). If there are no organizations representing homeworkers, they should not be invented by governments or other organizations or persons.

Slovakia. (Qu. 1) Yes. (Qu. 3) These tripartite bodies only have a consultative role.

Spain. Present drafting is correct. Given that it stipulates compliance with national law and practice, it does not undermine the distribution of authority in those countries where the organization is complex and decentralized. (Qu. 1 and Qu. 2) No. (Qu. 3) This could be resolved by rewording the last part of the provision as follows: "with information, as far as possible, from bodies of a tripartite nature, in the formulation of such a national policy".

Switzerland. (Qu. 1) Yes. (Qu. 2) Yes. (Qu. 3) No separate sentence, otherwise the nature and scope of competence of the tripartite bodies would have to be defined in a precise manner.

CP. Subparagraph (1): Agrees. Delete subparagraph (2).

VSA. (Qu. 1) Yes. (Qu. 2) Yes. (Qu. 3) It is appropriate that States be recommended to set up tripartite bodies where required.

Thailand. (Qu. 1) No. (Qu. 2) Yes. (Qu. 3) Yes. Formulating and implementing national policy on home work should be carried out on a tripartite basis at all appropriate levels.

Trinidad and Tobago. ECA. (Qu. 1) Yes. (Qu. 3) Yes. Full representation of all parties would facilitate the expression of views and concerns of all involved.

Tunisia. (Qu. 1) Yes. (Qu. 2) No. (Qu. 3) It is better to take the wording of Article 3 of the proposed Convention to establish the principle of consultation with the most representative organizations, etc.

United Kingdom. TUC. (Qu. 1) Yes. (Qu. 3) Supports reference to tripartite bodies. It is essential that the social partners be consulted as governments develop national policies for the effective protection of homeworkers.

United States. (Qu. 1) and (Qu. 2) No. The federal government would designate the authority to be entrusted with the formulation and implementation of such policy. Where an individual state has its own policy, the state would designate the authority for its policy. (Qu. 3) Yes, separate sentence. Would prefer language similar to that in Article 5.

USCIB. Use wording found in Article 4 of the Labour Administration Convention, 1978 (No. 150), as follows: "Each Member . . . shall, in a manner appropriate to national conditions, ensure . . .". This would obviate the need to refer to tripartite bodies.

UNITE. (Qu. 1) Yes. (Qu. 2) Yes. (Qu. 3) The reference to tripartite bodies should remain as it is to emphasize the importance of worker and management representatives participating in formulating and implementing the home work policy.

Zimbabwe. (Qu. 1) No. It is assumed that the social partners will refer to government, be it at the national or federal level. (Qu. 2) In federal systems one central authority should have a coordinating role. (Qu. 3) Delete the reference to "bodies of a tripartite nature" as it is the responsibility of the competent authority to formulate and implement policies, although consultations do take place.

Office commentary

Concerning subparagraph (1), the Office invited member States to comment on a number of questions and suggestions concerning certain aspects that seemed unclear. The first question (Qu. 1) was whether the reference in line 2 should be modified to read "designate an authority or authorities". The majority of Governments, workers' organizations and a few employers' organizations are in agreement with this change. A few feel that it is not really necessary but nevertheless agree to the new wording because it increases the flexibility of the instrument and allows governments to designate one or more authorities to deal with different aspects of the policy. Those who oppose the addition of "or authorities", or prefer the text as it stands, believe that the responsibility lies with the federal government or a particular ministry. Given the clear majority in favour of the modification, the words "or authorities" have been added in subparagraphs (1) and (2).

The second question (Qu. 2) was whether it was envisaged or preferable that there should in any case be one central authority which would have a coordinating role. Most replies are negative or prefer the text as it is. They reason that this would conflict with federal state systems and limit the ability of member States to decide on the most appropriate mechanism. Some of those who favour a central authority object to the addition of the words "or authorities" to subparagraphs (1) and (2) because they envisage one authority which would be responsible for the formulation and implementation of the policy. No change has been introduced in this regard.

The third question (Qu. 3) was whether the reference to tripartite bodies should be put in a second sentence and what relationship was envisaged between the competent authority and tripartite bodies. The replies to these questions can be divided into three groups: a slight majority of governments and workers' organizations are satisfied with the present text; another group agrees that the reference to tripartite bodies should be in a separate sentence; and a third group feel that the reference to tripartite bodies could be deleted in view of the tripartite consultation foreseen under Article 3 of the proposed Convention. The latter view is shared by most of the employers' organizations, including those who are of the opinion that the whole subparagraph is unnecessary. The views as to the relationship envisaged between the competent authority and the tripartite bodies vary greatly, demonstrating that the text can be interpreted in different ways. A fair number of governments believe that the role of the tripartite bodies is limited to consultation, but almost as many governments and workers' organizations want them to participate in the formulation, coordination and/or implementation of the national policy — or would even like the national authority to be of a tripartite nature. The Office has not changed the present text, but suggests that the Conference may wish to clarify the role of the tripartite bodies and consider replacing the phrase "making use, as far as possible, of bodies of a tripartite nature" by a new subparagraph, to be inserted after subparagraph (1) as follows:

(2) As far as possible, use should be made of tripartite bodies in the formulation and implementation of the national policy.

5. Detailed information, including data classified according to sex, on the extent and characteristics of home work should be compiled and kept up to date to serve as a basis for the

national policy on home work and for the measures adopted to implement it. This information should be published and made publicly available. Where possible, it should be translated into the relevant community languages.

Observations on Paragraph 5

Australia. Agrees to amendment suggested by the Office. See also comment under Article 9 of the proposed Convention.

ACCI. Opposes "languages understood by homeworkers" as it broadens the requirement.

Austria. Agrees to amendment suggested by the Office.

Bahamas. The information should be made available in languages that homeworkers understand or use in their day-to-day activities.

Brazil. Insert after classified by sex, "age and nationality". Agrees with the Office, but last sentence could be simplified as follows: "This information should be translated, as far as possible, in languages understood by homeworkers, published and made publicly available".

Canada. Immediately after "compiled", insert "to the extent possible" to take account of potential difficulties in gathering comprehensive information.

CEC. Prefers "relevant community languages". Languages "understood by homeworkers" might be different from a homeworker's spoken language.

Cyprus. Agrees to change suggested by the Office.

Estonia. Agrees to change suggested by the Office.

Finland. Opposes the change suggested by the Office which expands the range of languages to the indefinite.

France. The drafting suggested by the Office is more explicit.

CNPF. Delete this text.

CFDT. No objection to change suggested by the Office.

Germany. Opposes the change suggested by the Office as this would make it even less clear.

Greece. Prefers present text.

Hungary. Supports change suggested by the Office, but opposes the requirement for national authorities and employers to keep records. In the opinion of employers' and workers' organizations, this is unnecessary and exaggerated.

Japan. Agrees with proposed revision.

Lebanon. Agrees to change suggested by the Office.

Netherlands. Supports Office proposal as it is an improvement.

New Zealand. NZEF. It is for individual governments to decide what statistics should be kept.

NZCTU. Supports the suggested amendment, as it would facilitate the greatest degree of communication and understanding.

Nicaragua. Agrees to change suggested by the Office.

Norway. LO. Supports the suggestion made by the Office.

Portugal. Agrees to change suggested by the Office.

Spain. Opposes the suggestion made by the Office.

Switzerland. The wording suggested by the Office is better, but still too absolute. Replace by "languages understood by the majority of homeworkers".

CP. This is an example of over-regulation and should be drafted in much simpler terms.

VSA. Supports the change suggested by the Office.

Thailand. Agrees to change suggested by the Office.

Trinidad and Tobago. ECA. Agrees to change suggested by the Office. Making information readily accessible and understandable to all homeworkers would remove the problem of language barriers.

Tunisia. The present text is sufficiently clear. "Languages understood" could imply translation into many languages, especially in countries where homeworkers with many different nationalities are employed.

United Kingdom. TUC. Supports the change suggested by the Office.

United States. Agrees to change suggested by the Office.

USCIB. Opposes the suggestion made by the Office.

Office commentary

While the majority of the members of the Drafting Committee of the Conference Committee on Home Work felt that the expression "relevant community languages" was sufficiently clear, the Office invited comments on whether "languages understood by homeworkers" might not be clearer and avoid confusion in the future. A large majority of the governments and all workers' organizations commenting on this suggestion agree with the Office and feel that it improves the text. The reason given by the few governments and the majority of the employers' organizations which oppose the Office's suggestion is that it would expand the number of languages to the indefinite, especially in countries where homeworkers from multiple nationalities are employed. One government suggests limiting the requirement to "languages understood by the majority of homeworkers". A few other drafting changes are proposed by individual governments.

Considering the large majority in favour, the last sentence of the new Paragraph 4 has been changed to read: "Where possible, it should be translated into languages understood by homeworkers." The Office wishes to draw attention to the flexible wording of this sentence resulting from the use of the words "Where possible".

6. (1) When a homeworker is first given work, the employer or the intermediary should inform the homeworker of his or her specific conditions of employment in writing or in any other appropriate manner consistent with national law and practice. The employer or the intermediary should also inform the homeworker of changes in these conditions.

(2) This information should include, in particular:

(a) the name and address of the employer and the intermediary, if any;
(b) the scale or rate of payment and the methods of calculation; and
(c) the type and description of the work.

Observations on Paragraph 6

Australia. Delete the references to intermediaries.

ACTU. Subparagraph (1): Insert the words "in a language understood by the homeworker" at the end of the first sentence.

Austria. Delete the references to intermediaries, provided an alternative formulation in Articles 1 and 8 is found.

Bahamas. In subparagraph 2, clause (a), agrees to add "the intermediary, if any". It would appear that when intermediaries are used, questions of responsibility and obligations are raised and the system is open to abuse. In certain cases, however, intermediaries are necessary.

Barbados. BEC. Such relationships should be governed by existing practice in accordance with employment and contract law. If there is no specific law on contracts of employment, why should there be one for "homeworkers"?

Brazil. Agrees to deleting the references to intermediaries.

Canada. Agrees to deleting the references to intermediaries. See comments under Articles 1 and 8 of proposed Convention.

UNITE. Opposes deleting the references to intermediaries.

Croatia. Union of Autonomous Trade Unions (UATU). Subparagraph (2): Add a new clause to oblige employers to provide information on work standards.

Cyprus. Agrees to deleting the references to intermediaries, provided alternative (a) of Article 8 is accepted or if the text remains as in point 10 of the Conclusions adopted by the Committee on Home Work (*Provisional Record* No. 25, 82nd Session, International Labour Conference, 1995).

Estonia. Agrees to adding "or the intermediary". Some homeworkers manage their affairs only with an intermediary and do not need any information about the employer.

Finland. The references to intermediaries should be deleted.

SAK. Supports the references to intermediaries in this provision.

France. Agrees to deleting the references to intermediaries, provided that Article 8 of the proposed Convention is revised as suggested.

CFDT. Prefers to maintain the references to intermediaries, because it describes a reality, even in countries where they are prohibited by law. Since this is a Recommendation, the references to intermediaries should not bother States where this possibility is excluded in legislation.

Germany. Since the term "intermediary" and that person's role are not defined in the instruments, it would be better to dispense with mentioning the intermediary altogether.

Greece. Agrees to deleting the references to intermediaries.

Hungary. Agrees to deleting the references to intermediaries.

India. CITU. Accepts the suggestion.
SEWA and Hind Mazdoor Sabha. Retain the references to intermediaries.

Japan. Opposes deletion. It is important to inform homeworkers of the name of the intermediary, if any.
JTUC-RENGO. This provision should be included in the Convention.

Lebanon. Delete the references to the intermediary in subparagraph (1).

New Zealand. NZEF. Contracts of employment cannot be subject to unilateral variation.
NZCTU. The references to intermediaries should remain because it is fully consistent with the principle of joint and several liability.

Nicaragua. Agrees to deleting the references to intermediaries.

Portugal. Opposes the deletion of the references to intermediaries. Depending on the wording adopted under Article 8 of the proposed Convention, this Paragraph should specify some of the aspects that national legislation should regulate.
CIP. Subparagraph (2): This is excessive.
UGT. It is not logical to delete the references to intermediaries if Article 8 of the proposed Convention admits the possibility of their existence.

Spain. Agrees to deleting the references to intermediaries.

Sweden. TCO. Retain references to intermediaries.

Switzerland. Delete the references to intermediaries.
CP. Fully agrees to the principle of initial information, in writing, concerning the worker's relationship with the employer, but the prescriptions under Paragraphs 4 to 6 should not go beyond what is foreseen under Swiss law.
VSA. Subparagraph (2): Delete the references to intermediaries.

Thailand. The references to intermediaries should be retained.

Trinidad and Tobago. ECA. See comments under Article 8. The references to intermediaries should be retained and conditions should be specified under national law. Intermediaries can be useful to take over certain duties from employers.

Tunisia. The references to intermediaries could be deleted from this paragraph by inserting a new paragraph in the Recommendation along the lines of Article 8 of the proposed Convention [alternative (a)].

United States. Supports adding references to intermediaries as suggested by the Office. See also comments under Articles 1 and 8.
USCIB. Deleting the references to intermediaries does not solve the problem that the term is not defined anywhere.
UNITE. Opposes deletion of references to intermediaries.

Office commentary

As stated in Report IV (1), to be consistent with the first sentence, in which "the employer or the intermediary" is required to inform the homeworker of his or her specific conditions of employment, the Office had inserted "or the intermediary" in

the second sentence and "the intermediary, if any" in subparagraph (2) (a). However, given the discussion under Article 8 as to whether intermediaries should be allowed to operate, the Office had also suggested deleting the reference to intermediary from this Paragraph and invited comments of the member States on the proposed deletion.

The majority of governments commenting on this question agree to deleting the reference to intermediary. A few, however, indicate that they agree to the deletion, provided that the proposed alternative (a) text to Article 8 put forward by the Office in Report IV (1) is retained. The governments and almost all the workers' organizations who want to retain the references to intermediary stress that intermediaries are a reality and that, since this is only a Recommendation, it should not create a problem in those countries where they are not recognized by law. Most of the employers' organizations failed to answer the question.

Bearing the various views in mind and the fact that the use of intermediaries will not be excluded in all cases, the Office has introduced an editorial change which avoids the reference to employers and intermediaries in subparagraph (1), but retains the reference to "the intermediary, if any" in subparagraph (2) (a), thereby being consistent with the suggestions of a few governments. The editorial change simplifies subparagraph (1) by replacing the two sentences that refer to informing homeworkers of their conditions of employment when they are first given work and then again when changes in these conditions occur, by one sentence stating that homeworkers should be "kept informed" of their specific conditions of employment in writing or in any other appropriate manner consistent with national law and practice.

III. Supervision of home work

7. The competent authority at the national level and, where appropriate, at the regional, sectoral or local levels, should maintain a register of employers of homeworkers and of intermediaries used by such employers. For this purpose, such authority should specify the information employers should submit or keep at the authority's disposal.

Observations on Paragraph 7

Australia. See comment under Article 9 of the proposed Convention.

ACTU. Agrees.

Barbados. BEC. This is inappropriate other than for legislation on paid annual leave, national insurance and income tax requirements. Employers should not be required to keep registers of employees and certainly not by categories, sectors or tasks.

Brazil. CNI. Paragraphs 7 and 8: These provisions are too rigorous and bureaucratic, imposing a heavy administrative and financial burden on employers with repercussions on production costs. This is bound to encourage the growth of the informal sector.

Canada. Agrees.

CEC. Paragraphs 7 and 8: Setting up and maintaining such a machinery would result in a significant burden on and administrative costs to the national authority and employers.

Colombia. ANDI. Paragraphs 7 and 8: The creation and keeping of such a register would constitute an important burden, as well as an enormous administrative cost. See also comment under Article 1 of the proposed Convention.

Cyprus. CEIF. Paragraphs 7 and 8: Setting up and maintaining such a machinery would result in a significant burden on and administrative costs to the national authorities and employers.

Czech Republic. In the last sentence after "information", insert "which according to the national legislation". The law — and not the authority — should specify what information employers should submit or keep.

Confederation of Industry and Transport. Maintaining such registers would increase the cost of State administration and impose additional obligations on employers.

Finland. The keeping of registers to the extent proposed is not appropriate.

Hungary. See comment under Paragraph 5 above.

India. CITU. Agrees.

Italy. CONFINDUSTRIA. Paragraphs 7 and 8: These provisions place a heavy burden on national authorities and on employers and increase administrative costs.

Japan. ZENROREN. This should be included in the proposed Convention.

Lebanon. If the reference to "intermediaries" is to be retained, the words "if any" should follow.

Malaysia. MEF. Paragraphs 7 and 8: These requirements would result in a significant burden and administrative cost to national authorities and employers in setting up and maintaining such a machinery.

New Zealand. This should be decided at the country level and all workers should have the same rights.

NZEF. This would be difficult to apply in practice. Employers might be reluctant to become involved in yet another bureaucratic procedure and so be reluctant to adopt a flexible approach accommodating needs of individual employees.

Norway. NHO. Expresses great concern over the bureaucracy and additional administrative costs concerning the development and maintenance of the proposed register.

Portugal. CIP. This would create a significant bureaucratic burden and an undesirable increase in administrative costs. The specification of information to be provided should result from specific regulations and should not be decided by the competent authority.

Switzerland. ASM. This text is too bureaucratic and heavy.

Swissfashion. Articles 7 to 10 could cause additional administrative and financial costs which would not encourage employment.

CP. Agrees there should be a contract, but questions the need to list all these details in an international instrument. It would mean that the Recommendation would not be applied.

Syrian Arab Republic. Chamber of Industry. Opposes.

United Kingdom. CBI. Paragraphs 7 and 8 (1): These requirements would result in a significant burden on and administrative costs to the national authorities and employers in setting up and maintaining such a machinery.

United States. USCIB. The registration requirement exceeds current practice and should be deleted. It creates an unending data requirement that applies to full-time as well as to ad hoc homeworkers.

Office commentary

Many employers' organizations comment in almost identical terms that the requirement to maintain a register to the extent indicated in this Paragraph is inappropriate, too rigorous and bureaucratic and would result in a significant burden and administrative costs to national authorities and employers. Only two governments make similar statements.

The Office has left this Paragraph unchanged, except for a minor editorial change. The word "any" has been inserted before "intermediaries". This is in line with the previous discussion on acknowledging intermediaries, if any, and was specifically suggested by one government.

8. (1) Employers should be required to notify the competent authority when they give out work, directly or through an intermediary, to homeworkers for the first time.

(2) Employers should keep a register of all homeworkers, classified according to sex, to whom they give work.

(3) Employers should also keep a record of work assigned to a homeworker which shows:

(a) the time allocated;

(b) the rate of remuneration;

(c) costs incurred, if any, by the homeworker and the amount reimbursed in respect of them;

(d) any deductions made in accordance with national laws and regulations; and

(e) the gross remuneration due and the net remuneration paid, together with the date of payment.

(4) A copy of the record referred to in subparagraph (3) should be provided to the homeworker.

Observations on Paragraph 8

Australia. Subparagraph (1): The suggested amendment would not present difficulties for Australia and would assist flexible application of the Convention. See also comment under Article 9 of the proposed Convention.

ACCI and ACTU. Agrees.

Bahamas. Subparagraph (1): Agrees to alternative definition suggested by the Office.

Barbados. BEC. This arrangement would be impractical, bureaucratic and questionable.

Belgium. The suggested new wording is acceptable.

Brazil. Subparagraph (1): Agrees to new drafting suggested by the Office. Subparagraph (2): Insert after "sex", "age and other basic characteristics". Subparagraph (3): Insert before (a) a new clause as follows: "the nature and a detailed description of the work;".

Canada. Agrees to present text.
UNITE. Opposes deletion of reference to intermediaries.

Cyprus. Subparagraph (1): Agrees to suggested modification.
PEO. See comments under Article 8 of the proposed Convention.

Czech Republic. Agrees to change suggested by the Office.

Estonia. Agrees to change suggested by the Office.

Finland. The obligation of employers to notify to the extent proposed is not appropriate.

France. CNPF. These provisions are far too complex and heavy and go beyond the possibilities of countries where the situation of homeworkers is most noticeable.
CFDT. Agrees to the suggestion, subject to a reference to intermediaries for the reasons mentioned under Paragraph 6 above.

Germany. Subparagraph (1): Delete reference to intermediaries. Subparagraph (3)(e): Delete "and the net remuneration paid". A regular feature of pay regulations is that only the gross remuneration is established and the remuneration of homeworkers is assessed on this basis.
BDA. Subparagraph (3): For legal reasons of personal data protection, employers are not authorized to publicize more comprehensive data. Clause (d) should therefore be deleted; and the phrase "and the net remuneration paid" in clause (e) should be deleted because the calculation of the net remuneration varies according to the respective personal conditions of persons employed in home work.

Greece. Agrees to suggested modification.

Hungary. Subparagraphs (1) and (2): See comment under Paragraph 5 above.

India. CITU. Agrees to suggested modification.
SEWA and Hind Mazdoor Sabha. Retain reference to the intermediary.

Japan. NIKKEIREN. Subparagraph (1) should remain unchanged. Subparagraph (3): Delete clauses (a), (c) and (d). A record of work assigned to a homeworker should be limited to indispensable items in order to avoid excess administrative work and an increase in administrative costs.
JTUC-RENGO. Agrees to the modified text suggested by the Office.
ZENROREN. Subparagraphs (1) and (2) should be included in the proposed Convention.

Lebanon. Subparagraph (1): Agrees to change suggested by the Office.

Netherlands. Agrees to deleting the reference to intermediaries.

New Zealand. NZEF. It is the responsibility of member States to determine whether or not notification is to occur and what, if any, records are to be kept.

Nicaragua. Agrees to suggested modification.

Portugal. Agrees to suggested modification.

CIP. See under Paragraph 7 above. Subparagraph (3), clauses (a) and (b): This is excessive.

UGT. See comment under Paragraph 6 above. Subparagraph (3): Replace clause (a) by "the time needed to complete each work assignment". Add at the end of clause (b) "and in case of remuneration by the piece, the time needed to complete each piece or each work assignment".

Slovakia. Opposes the alternative definition.

Sweden. TCO. Retain reference to intermediaries.

Switzerland. Subparagraph (1): Agrees to alternative text suggested by the Office.

VSA. Supports the Office's suggestion.

Syrian Arab Republic. Chamber of Industry. Opposes suggested change.

Thailand. Agrees to present text.

Trinidad and Tobago. ECA. See under Article 1 (b).

Tunisia. Subparagraph (1): This procedure is not useful. The register and records, specified under subparagraphs (2) and (3), should be sufficient to have information on homeworkers.

United Kingdom. Supports the alternative text suggested by the Office. It should assist in the collection of labour statistics and enable governments to make arrangements for enforcement and inspection.

United States. Subparagraph (1): Opposes suggested change at this time.

USCIB. Subparagraph (1): This would effectively serve as a brake on a dynamic part of the labour market, thus impeding job creation. There would also be a real problem of the employer determining when work was "given out". It would require detailed knowledge as to how an employer's vendor produces its product. Subparagraph (2) should be deleted. See comments under Paragraph 7 above. Subparagraphs (3) and (4) should be deleted, as they contain requirements which are not found on typical pay stubs.

Office commentary

Subparagraph (1), as adopted during the first discussion, required employers to notify the competent authority when they gave out work, directly or through an intermediary, to homeworkers for the first time. In Report IV (1), the Office invited comments on whether this sentence should be modified to be in line with the alternative definition of employer in Article 1 (b) of the proposed Convention and Paragraph 2 (b) of the proposed Recommendation suggested by the Office, which would result in the reference to intermediary being deleted.

A large majority of the governments agree to the modification suggested by the Office. A much smaller group of governments and the majority of workers' organizations replying to this question insist on retaining the reference to intermediaries. The employers' organizations and two governments again insist that this requirement is excessive.

Bearing in mind these different views and the revised definition of "employer" discussed under Article 1 of the proposed Convention, the Office has simplified the provision to read: "Employers should be required to notify the competent authority when they give out home work for the first time". The term "employer" includes the possibility of giving out work through an intermediary, thus the phrase is not repeated here. A few governments and some employers' organizations commented on the other subparagraphs, mainly calling for the deletion of certain clauses; however, no further changes have been introduced.

9. In so far as it is compatible with national law and practice concerning respect for privacy, labour inspectors or other officials entrusted with enforcing provisions applicable to home work should be allowed to enter the parts of the home or other private premises in which the work is carried out.

Observations on Paragraph 9

Australia. See comments under Article 9 of the proposed Convention.

ACTU. Agrees.

Austria. See comments under Article 9.

BAK. In the event that national law and practice with regard to privacy prohibits an inspection, suitable measures should be taken to ensure that implementation of provisions applicable to home work can be monitored.

Barbados. BEC. Such an action would probably be unconstitutional.

Canada. Agrees

Colombia. See comment under Article 9.

Cyprus. CEIF. A balance would need to be struck between the competing interests of health and safety, on the one hand, and respect for personal privacy, on the other.

India. CITU. Women inspectors should be employed to inspect the homes of Muslim women.

Lebanon. It is not clear what the term "enforcing" implies. Agrees with the concept of "watching over and application", but not with the concept of "implementation".

New Zealand. NZEF. See comments under Article 9.

Portugal. CIP. See comments under Article 9.

UGT. Delete "or other officials". It is not clear who they are and why this reference exists. Add at the end of the Paragraph: "This inspection should be

authorized only: (a) in the parts of the house or of the premises which are used for home work or for storing materials; (b) at specified and prearranged times; (c) in the presence of the homeworker or his or her representative".

Office commentary

The comments on this Paragraph are linked to the discussion under Article 9 of the proposed Convention. Doubts were again raised concerning the feasibility of carrying out inspections in private homes. It is recalled that during the first discussion, it was suggested that many of the problems raised could be addressed through national law and practice, for example by restricting access to the parts of the home where home work is carried out and specifying the hours when inspections could take place. The text is submitted unchanged.

10. In cases of serious or repeated violations of the laws and regulations applicable to home work, appropriate measures should be taken, including the possible prohibition of giving out home work, in accordance with national law and practice.

Observations on Paragraph 10

Australia. ACTU. Agrees.

Canada. Agrees.

Lebanon. The Government wonders whether this provision applies to violations by employers, intermediaries — if any — and workers, or only to those committed by the employer. If it is applicable only to employers, it asks what measures could be taken against a worker who commits a violation; and it raises the question of what guarantees would be given to a homeworker in case of prejudice which might result from measures applied against an employer or intermediary, if any, for violations.

New Zealand. Normal practice should apply to homeworkers and their employers.

Portugal. UGT. The previous text is better.

Office commentary

No particular problems were raised in regard to this Paragraph, though one government feels that the provision is not sufficiently specific. The text is submitted unchanged.

IV. Minimum age

11. Where this is not already the case, national laws and regulations concerning minimum age for admission to employment or work should apply to home work.

Observations on Paragraph 11

Australia. ACTU. Agrees.

Barbados. BEC. This is irrelevant in the light of existing laws.

Canada. Agrees.

Switzerland. CP. Homeworkers often use children to help in simple tasks.

Syrian Arab Republic. Chamber of Industry. Opposed. It would be difficult to implement minimum age requirements in the home, where recourse to under-age children is difficult to prevent.

United States. USCIB. This would be inconsistent with provisions found in many national laws providing for an exception for young homeworkers working under parental supervision.

Office commentary

Apart from the doubts as to the possibility of implementing such a provision expressed by a few employers' organizations, no comments were made on this provision. The Office has nevertheless made an editorial change to delete the words "Where this is not already the case" as it is implicit in the sentence.

V. The rights to organize and to bargain collectively

12. Legislative or administrative restrictions or other obstacles to the exercise of the right of homeworkers to establish their own organizations or to join the workers' organizations of their choice and to participate in the activities of such organizations, as well as to the exercise of the right of organizations of homeworkers to join trade union federations or confederations, should be identified and eliminated.

Observations on Paragraph 12

Australia. Agrees.

Bahamas. Agrees.

Barbados. BEC. Such a provision does not exist for any other worker.

Brazil. Delete the word "identified". It is superfluous.

CNI. Replace by new text as follows: "In accordance with national law and practice, homeworkers may exercise the right to establish their own organizations or to join them, and organizations of homeworkers may exercise the right to join trade union federations or confederations".

Canada. Agrees.

Cyprus. PEO. Agrees.

Estonia. Agrees.

Greece. Agrees.

India. CITU. Agrees. This should be pursued vigorously.

Japan. NIKKEIREN. This should be left to member States.
JTUC-RENGO. Agrees.
ZENROREN. This provision should be included in the proposed Convention.

Lebanon. Agrees. Add at the end "in accordance with the laws and regulations in force". The right of homeworkers should be guaranteed under national laws and practice.

Portugal. Agrees.
CIP. The Recommendation should not settle this matter which should result from national law and practice.

Switzerland. CP. Fully supports the principle, but the Paragraph should be condensed.
VSA. Agrees.

Trinidad and Tobago. ECA. Agrees.

Tunisia. Agrees.

Office commentary

Very few comments were made on this Paragraph. However, those who replied feel that the right of homeworkers to organize is a matter to be determined by national law and practice. Some also point out that the drafting needs improvement. The Office agrees and has divided the sentence into clauses (a) and (b) to provide clarity. Clause (a) refers to the right of homeworkers, while clause (b) refers to the right of organizations of homeworkers.

13. Measures should be taken to encourage collective bargaining as a means of determining the terms and conditions of work of homeworkers.

Observations on Paragraph 13

Australia. ACTU. Agrees.

Barbados. BEC. This is not carried out for any group of workers and would interfere with the voluntary nature of collective bargaining.

Canada. Agrees.

Hungary. Work performed at home is not a special type of employment relationship and regulation through collective agreements would be impossible.

Japan. NIKKEIREN. This is not appropriate as home work is basically carried out under a free contract between a homeworker and a contractor.
ZENROREN. This provision should be included in the proposed Convention.

Lebanon. The Government wonders what kind of measures could be taken to encourage collective bargaining? There are legal texts which regulate collective bargaining for different kinds of work.

New Zealand. NZEF. For many persons seeking to work at home, the individual nature of their requirements may mean that coverage by collective contract is inappropriate. Insert "Where appropriate" at the beginning of the Paragraph to make it more generally applicable.

Portugal. CIP. Delete this Paragraph. It is an internal matter for each member State.

UGT. After "encourage", insert "and promote".

Switzerland. Swissfashion and UCAPS. Delete this Paragraph. It is a matter for the social partners and cannot be prescribed from above.

Office commentary

This Paragraph is generally accepted, although some employers' organizations and one government consider collective bargaining unsuitable for home work and feel that governments should not influence the social partners. The provision is submitted unchanged.

VI. Remuneration

14. Minimum rates of wages should be fixed for home work, in accordance with national law and practice.

Observations on Paragraph 14

Australia. ACTU. Agrees.

Barbados. BEC. Only maids and shop assistants have minimum wages.

Canada. After the words "wages should", replace "be fixed" by "apply to". This would make it clear that the provision would not necessarily require that minimum wage rates be established specifically for homeworkers and for different categories of homeworkers, but that general minimum wage rates could be applied to homeworkers.

Japan. ZENROREN. This provision should be included in the proposed Convention.

Kuwait. National law does not fix minimum wages for the private sector. It is left to the discretion of the parties to the work relationship.

Switzerland. ASM. Is opposed to this provision. Fixing minimum wages is in contradiction to the system of determination of wages at enterprise level practised in a satisfactory manner in Switzerland. Imposing another system at the international level would harm relations between employers and workers.

Swissfashion. Fixing minimum wages has not proved successful in practice and has resulted in employers creating low wage zones.

CP. The only means of fixing wage rates for home work is the market. All other means can burden or paralyse the system.

United States. USCIB. This Paragraph should be deleted because it implies that there would be a different minimum wage for homeworkers.

Office commentary

The few points raised on fixing minimum rates of wages for homeworkers were already debated in the form of amendments and subamendments during the first discussion. After lengthy discussion, the Conference Committee adopted an amendment to add the words "in accordance with national law and practice". This provides flexibility on the methods to be used in fixing minimum rates in view of different national situations and would appear to meet the reservations expressed. The Office submits the text unchanged to the Conference.

15. Rates of remuneration of homeworkers should be fixed by collective bargaining, or in its absence, by:

(a) decisions of the competent authority, after consulting the most representative organizations of employers and of workers as well as the organizations concerned with homeworkers and those of employers of homeworkers, or where the latter do not exist, representatives of homeworkers and of employers of homeworkers;

(b) other appropriate wage-fixing machinery at the national, sectoral or local levels; or

(c) agreement between the homeworker and the employer.

Observations on Paragraph 15

Australia. Delete clause (c). Agrees with the views of the Office.

ACCI. Strongly opposes the inappropriate suggestion made by the Office to delete clause (c) which was added after much debate in the Committee. Given the broad definition of home work, it is essential to recognize the existence of individual agreements, which are preferred by many homeworkers. Adequate protection is provided to all workers under the Minimum Wage Fixing Convention, 1970 (No. 131). The preference for collective bargaining is clearly stated.

ACTU. Strongly supports the arguments put forward by the Office.

Austria. Delete clause (c).

BAK. Clause (c) is unsuitable for this instrument. One of the reasons for the precarious wage situation of homeworkers is undoubtedly unregulated individual agreements, which basically imply that these workers are at the mercy of employers.

Bahamas. The argument put forth to delete clause (c) states the case adequately. The individual right to negotiate is not in question.

Barbados. BEC. Collective bargaining is voluntary; the rest of the Paragraph is alien to Barbados.

Belgium. CNT. The problem raised by the Office could be resolved through a major revision of Paragraphs 14 and 15.

Brazil. Delete clause (c) for the reasons indicated by the Office. Maintaining agreements between the employer and the homeworker as a form of fixing rates of remuneration would imply that no improvements would be made to existing methods; indeed, the unsatisfactory working and living conditions of homeworkers could even further deteriorate as a result.

Bulgaria. Considers that collective bargaining could not be applied to home work.

Canada. Agrees to retain clause (c) if it is made clear that it is only to be used as a last resort, and that collective bargaining is the preferred means to fix the rates of remuneration of homeworkers.

CEC. It is essential to retain clause (c) unchanged if the present definition of homeworker remains. The scope of the proposed Convention covers a broad range of workers whose rates of remuneration are determined by agreement directly between the homeworker and the employer. In Canada, these workers are not restricted to low-wage, industrial skills, but include a growing population of independent operators, who work out of their own homes and sell their services on a freelance basis to clients and customers. For these entrepreneurs, collective bargaining does not represent a preferred situation. If these workers are caught in the ambiguous definition of homeworker, their terms and conditions must be recognized in the way remuneration is set.

UNITE. Very concerned about clause (c) remaining in the text because it is diametrically opposed to the principle of collective bargaining. It would perpetuate extremely low wages for homeworkers, who are isolated and vulnerable vis-à-vis their employer. In reality an individual agreement means the employer sets the wages. International research has consistently found that wages for homeworkers are consistently lower than for other workers. No other ILO instruments suggest individual agreements and they should not be included here either.

Croatia. Rates of remuneration are obligatory in contracts of employment of which they constitute a substantial element. The argument is unacceptable. Protection of workers is realized by establishing minimum wages in collective agreements.

Cyprus. Delete clause (c), or make it clear that individual agreement would only be a last resort.

PEO. Clause (c) is inappropriate. Homeworkers are a vulnerable category of workers without bargaining power and employers could exploit this situation. The problem of low wages would not be addressed.

Czech Republic. Retain clause (c). Czech law does not require a specific authority to fix rates of remuneration for home work or to introduce other wage-fixing machinery in this regard. The law allows employers to negotiate wage rates (including those of homeworkers) through collective agreements, in-company wage regulations — if there is no trade union organization to negotiate — or individual contracts. In so doing, employers must respect minimum wage rates determined by law.

Estonia. Agrees to deleting clause (c).

Fiji. FTUC. Strongly refutes the inclusion of clause (c), as it would result in a further deterioration of the already low level of wages. It is also in contradiction with ILO principles.

Finland. Agrees to deleting clause (c).

SAK. Clause (c) should be deleted because, in practice, it would nullify wage regulations in cases where collective agreements are not applied to homeworkers.

France. Agrees to deleting clause (c).

CNPF. Retain clause (c), because individual agreements are not necessarily inferior to collective ones. There could also be a combination of both. Individual freedom is a fundamental right.

CFDT. Firmly insists on deleting clause (c). Agrees with the Office; it would be paradoxical for the ILO to promote individual agreements at the expense of collective bargaining.

CGT-FO. Delete clause (c).

Germany. No objection to deleting clause (c).

DGB. Delete clause (c). Collective bargaining should be given precedence over any other method.

Greece. Delete clause (c).

Hungary. Considers it necessary and reasonable to retain clause (c).

India. CITU. Collective bargaining should be given preference.

SEWA and Hind Mazdoor Sabha. Delete clause (c). Extremely low wages are one of the main problems faced by homeworkers. Due to their very weak socio-economic situation, homeworkers are not in a position to bargain on an individual basis. Usually wages are fixed unilaterally by employers. The situation can only improve if homeworkers become stronger and negotiate their wages collectively.

Japan. The diversity of wage-fixing methods in member States should be reflected in the instrument and clause (c) should remain in the text.

NIKKEIREN. Clause (c) is necessary, because collective bargaining is not appropriate to determine rates of remuneration of homeworkers.

JTUC-RENGO. Clause (c) should be deleted, as it merely endorses the current situation and would not lead to an improvement in the situation of homeworkers. This provision should be included in the Convention.

Lebanon. Retaining clause (c) would not be harmful, because it would encourage dialogue between the employer and the homeworker on remuneration rates and could benefit the homeworker, especially in cases where it is impossible to achieve satisfactory results through other wage-fixing methods.

Netherlands. Deleting clause (c) would mean that governments would again have to intervene to fix rates if the other wage-fixing machinery fails. Recognizing the problem raised by the Office, the Government suggests finding a solution whereby it would be understood that governments that fix a general minimum wage would be in compliance with this provision.

New Zealand. NZEF. Retain clause (c).

NZCTU. Delete clause (c), as it would undermine the intention to promote the rights of homeworkers and collective bargaining. No other ILO instrument accords individual bargaining this degree of preference.

Nicaragua. Retain clause (c) because it constitutes the individual contract of employment which is the basis for all labour relations.

Norway. LO. Strongly opposes clause (c).

Portugal. Clause (a): Agrees. Opposes the deletion of clause (c). In the absence of collective agreements, agreement between the parties is better than a unilateral decision by the employer.

CIP. Delete this Paragraph. Rates of remuneration should be determined in accordance with practice in each member State.

UGT. Delete clause (c).

Embroidery Workers of Madeira. Delete clause (c).

Spain. Clause (c): It is not inadvisable to refer to agreement between the parties in the absence of collective agreement, given that home work is neither customary nor commonplace in collective bargaining. However, a formula should be found so as not to place it on the same level as options (a) and (b).

Sweden. LO and TCO. Delete clause (c). No other ILO instrument proposes individual agreements as a means of setting wages.

Switzerland. The problem is that the options are listed in an exhaustive manner. Reformulate clause (c) to say that (a) and (b) are preferable to an agreement between the homeworker and the employer.

UCAPS, ASM and CP. Delete Paragraphs 15 to 19.

Swissfashion. Pay rates should be fixed only by agreement between the homeworker and the employer according to the branch, the product and the situation of the market.

VSA. Delete clause (c).

Thailand. Delete clause (c). The appropriate machinery should be collective bargaining.

Trinidad and Tobago. ECA. Delete clause (c). It seems to be more a problem than a solution. The preferred method is collecting bargaining.

Tunisia. Clause (c) should be retained because, in the absence of collective agreements, remuneration is fixed by individual agreement; or if collective agreements exist, higher rates may be agreed individually. As to the problem of low wages, Paragraph 14 above establishes minimum rates.

United Kingdom. TUC. Clause (c): To allow wage rates to be determined by employers and individual employees is a recipe for continued low pay and exploitation. Including such a clause in an ILO instrument would run counter to the promotion of collective bargaining and some of the key human rights Conventions. A new instrument should not undermine the terms of those Conventions.

United States. Agrees to deleting clause (c).

USCIB. Strongly objects to the Office seeking to reverse an express decision of the Committee on Home Work by suggesting the deletion of clause (c). If clause (c) is deleted, Paragraph 15 should be deleted. It is unacceptable not to recognize that

employers and homeworkers are capable of agreeing on wage rates, without government wage-fixing machinery or collective bargaining.

UNITE. Strongly supports the deletion of clause (c) for the reasons given by the Office. To recommend individual agreements for homeworkers, who are the most vulnerable workers and least able to negotiate fair wages, would be contrary to the very *raison d'être* for an instrument on home work. It is the problem, not the solution.

Office commentary

In Report IV (1) the Office drew attention to the seeming inappropriateness of clause (c) as adopted by the Conference Committee and asked member States to comment on deleting this clause. Recommending agreements between the homeworker and the employer as a preferred method to fix rates of remuneration of homeworkers in an instrument which aimed to improve the situation of homeworkers seemed incongruous.

The greater number of governments and all workers' organizations commenting on this Paragraph support the deletion of clause (c). They reiterate that low wages constitute one of the main problems faced by homeworkers, most of whom are in a weak position to bargain individually with employers. They further argue that clause (c) merely endorses the current situation and would run counter to ILO principles promoting collective bargaining and to some key human rights Conventions. Several employers' organizations strongly object to the Office calling into question a point that was discussed and adopted by the Conference Committee.

Several of the governments in favour of retaining clause (c) suggest that the Paragraph should be redrafted to make it clear that individual bargaining should only be used as a last resort and that collective bargaining is the preferred means to fix the remuneration rates of homeworkers. The Office has taken up this suggestion and has emphasized in subparagraph (1) that rates of remuneration of homeworkers should be fixed "preferably" by collective bargaining, or, in its absence, by the methods in clauses (a) and (b). A second subparagraph has been inserted to state that "where rates of remuneration are not fixed by one of the means in subparagraph (1) above", they should be fixed by agreement between the homeworker and the employer. It is, of course, for the Conference to decide whether this helps to reconcile the different points of view.

16. For specified work paid by the piece, the rate of remuneration of a homeworker should be comparable to that received by a worker in the enterprise of the employer, or if there is no such worker, in another enterprise in the branch of activity and region concerned.

Observations on Paragraph 16

Australia. ACTU. Agrees.

Barbados. BEC. This would interfere with an individual's freedom to contract.

Canada. Replace "comparable to" by "no less than". Using the term "comparable" might preclude compensation for a homeworker's overhead costs.

Czech Republic. The employer defines the work content of one standard hour on the basis of which piece rates for homeworkers are determined. These rates must be communicated to the worker in advance. They may also be fixed by collective agreements; or the trade unions concerned must be consulted. Existing legislation does not permit intervention in determining piece rates at enterprise level. This would require substantial changes in legislation.

Japan. NIKKEIREN. The method of fixing remuneration rates should be commensurate with the actual conditions prevailing in each member State.

Portugal. CIP. Delete this Paragraph.

UGT. Replace "comparable" by "equal", and after "a worker" insert "doing the same work or in the same or similar profession".

Syrian Arab Republic. Chamber of Industry. Opposed. This would be unfair towards the worker in the enterprise, who has to work in a position of subordination with strict working conditions, fixed working hours and discipline, and has to bear transportation costs and other physical, moral and material burdens which the homeworker does not have.

Office commentary

Although a few new suggestions for amendments have been made concerning this provision, this Paragraph is submitted unchanged.

17. Homeworkers should receive compensation for:

(a) costs incurred in connection with their work, such as those relating to heating, lighting, water, communications and maintenance of machinery and equipment; and

(b) time spent in maintaining machinery and equipment, changing tools, sorting, unpacking and packing, and other such operations.

Observations on Paragraph 17

Australia. Agrees. Add new clause to provide for compensation for operational costs, including a payment to account for the initial outlay which homeworkers have made on machinery and equipment.

Bahamas. Agrees.

Brazil. Transportation to collect and deliver work can be costly and time-consuming for homeworkers. Insert the word "transportation" in clause (a) after "communications" and in clause (b) after the word "packing".

CNI. Opposes this Paragraph. The most that the Recommendation could do is suggest the possibility of compensation.

Canada. Agrees in principle on the assumption, as explained by the ILO Legal Adviser during the first discussion, that the phrase "homeworkers should receive compensation" is not limited to compensation from employers.

Croatia. UATU. Minimum levels of costs to be covered should be established in the proposed Recommendation or by national laws and regulations.

Cyprus. PEO. Agrees.

Estonia. Agrees.

Finland. AKAVA. State more clearly that homeworkers should receive compensation for reasonable costs incurred when using their own tools.

Greece. Agrees.

India. CITU. Agrees.

Japan. NIKKEIREN. These are matters to be arranged between the two parties concerned, namely the contractor and the homeworker.

JTUC-RENGO. Agrees.

Mongolia. Add a new clause, as follows: "overtime premium pay at the same rate as industrial workers for work on national public holidays at the request of the employer or when circumstances make it indispensable to do so".

Nicaragua. Agrees.

Portugal. Agrees.

CIP. Delete this Paragraph.

UGT. Insert "financial" before "compensation". Clause (a): Insert "or air-conditioning" after "heating"; replace the words "of machinery and equipment" by "and installation of machinery, electronic and other equipment, transportation, rent, insurance and materials". Add a new clause, as follows: "expenses incurred for the acquisition of tools and machinery".

Sweden. LO. Clause (a): Payment should also be made for a work space in the home. More and more employers are moving production and other operations away from permanent premises into employees' homes to reduce expenditure on facilities. It would be absurd for employees to provide working space free of charge in order for employers to reduce overhead costs.

TCO. Homeworkers should also receive payment for working space they provide in their homes.

Syrian Arab Republic. Chamber of Industry. Opposed. It would be difficult to determine what part of these expenses were incurred by the household and what part by home work.

Trinidad and Tobago. ECA. Agrees.

United States. USCIB. Clause (a): This should be agreed between the homeworker and the employer. Clause (b): This is not appropriate if the homeworker is paid by the piece.

Office commentary

While most governments and workers' organizations merely state their agreement to the minor editorial changes introduced by the Office, several others suggest amendments to add to the list of items for which homeworkers should receive compensation, such as operational costs, transportation, packing, work space in the house and overtime worked at the request of the employer. Some of the items cited were already submitted in the form of amendments during the first discussion but were later withdrawn. Some also mention that the levels of compensation should be established in the Recommendation or by national law and practice, or that the compensation should be limited to reasonable costs. One Government member recalls the understanding that compensation in this case should not be limited to compensation from the employer. Several employers' organizations call for the deletion of the Paragraph, while others comment that this is a matter to be agreed between the parties or draw attention to the fact that it would be very difficult to separate expenses incurred by the household from those used for home work.

The Office has introduced a small editorial change in clause (a) to refer more generally to costs relating to "the use of energy" rather than specifically to heating and lighting. This change was prompted by a suggestion that "or air-conditioning" be added.

18. (1) National laws and regulations concerning the protection of wages should be applicable to homeworkers.

(2) Deductions which may be made from a homeworker's remuneration to cover the cost of spoilt materials or defective work should not exceed pre-established limits.

(3) Homeworkers should be paid either on delivery of each completed work assignment or at regular intervals of not more than one month.

Observations on Paragraph 18

Australia. Agrees.

Bahamas. In subparagraph (3), after "work assignment or", insert "some measurement of completed work as agreed between the homeworker and the employer with payment being made".

Canada. Agrees.

Cyprus. PEO. Agrees.

Estonia. Agrees.

Germany. Subparagraph (2): The liability of homeworkers should not be limited. Under German law, the homeworker and the principal sign a work contract. The homeworker owes the principal flawless work. A homeworker who delivers substandard work or fails to deliver the work is not entitled to remuneration.

Greece. Agrees.

Japan. NIKKEIREN. It is not reasonable that national laws and regulations on the protection of wages be applied to homeworkers. A homeworker's pay cannot be handled in the same manner as normal wages.

JTUC-RENGO. Agrees.

Lebanon. Agrees. Subparagraph (3): The date of payment of wages should be fixed by agreement between the parties.

New Zealand. NZEF. The same wage-protection provisions should apply to all employees.

Mongolia. Add a new subparagraph, as follows: "A homeworker under contract with an employer, who fails to provide him/her with work, should be entitled to payment for non-working periods in accordance with national laws and regulations".

Portugal. Agrees.

CIP. Delete this Paragraph.

Switzerland. VSA. Agrees.

Syrian Arab Republic. Subparagraph (2): After "materials", insert "caused by him or her", and at the end add "determined by the competent authority in national legislation".

Trinidad and Tobago. ECA. Agrees.

United States. USCIB. Subparagraph (2): Unless the homeworker and the employer agree to the contrary, there should be no limit on deductions for defective work or spoilt materials.

Office commentary

One suggestion was made to add a new subparagraph to compensate homeworkers under contract for non-working periods.

Except for a minor editorial change, whereby the words "should be applicable to homeworkers" are replaced by "should apply to homeworkers" in subparagraph (1), the Office submits this Paragraph unchanged to the Conference.

19. The employer and the intermediary, if any, should be made jointly and severally liable for payment of the remuneration due to homeworkers, in accordance with national law and practice.

Observations on Paragraph 19[1]

Australia. Agrees, because of the protection it provides to homeworkers. (Qu. 1) Yes, because under Australian law the intermediary is either an agent of the employer

[1] In Report IV (1) (p. 10), the Office invites member States to comment on two questions (hereinafter referred to as Qu. 1, Qu. 2) concerning this provision.

and would not generally be liable for his or her acts on behalf of the employer, or in the absence of an agency, the intermediary may be solely liable as principal. (Qu. 2) Yes, including problems of compatibility with the industrial legislative policy of both federal and state governments, coordination of legislative action at federal and state levels and gaining cooperation from industry parties. There could also be problems concerning the capacity to police the respective responsibilities of employers and intermediaries, including their relative liabilities.

ACCI. This Paragraph should be deleted and the liabilities of intermediaries left to national laws to determine under Article 8 of the proposed Convention.

ACTU. This Paragraph should be deleted because it may cause confusion concerning the responsibilities of the employer. The agreement is between the homeworker and the employer and this is clear throughout the proposed instrument.

Austria. Agrees to new wording suggested by the Office. (Qu. 1) Austrian law establishes joint and several liability of the principal with all intermediaries used by him or her. This liability also extends to those components of the remuneration which cover continued payment in the event of illness or public holidays, as well as holiday pay and special payments. (Qu. 2) There would be no problem in implementing this provision, provided the definition of homeworker does not cover services.

BAK. Legal adjustments would have to be made to cover employees working at home.

Bahamas. Under the Bahamian common law system, the role of the intermediary should not pose a difficulty. There should be no need for enactment of additional legislation.

Belgium. The new wording is better.

Brazil. The wording suggested by the Office is more appropriate. The national Labour Code contains provisions which are similar to the concepts of joint responsibility referred to here. They do not focus specifically on homeworkers, but could constitute a basis upon which the administrative authorities and jurisprudence reach a decision.

Canada. Replace "and the intermediary, if any," by "and any other person jointly responsible under national legislation,". This would make the provision more applicable to a variety of situations in different member States.

PSAC. Supports language proposed by the Office.

UNITE. Agrees. Retain the wording "jointly and severally liable".

Congo. The joint liability of the intermediary with the employer, especially in cases of insolvency of the latter, is an additional guarantee in the protection of the homeworker.

Croatia. Joint and several liability is not acceptable, because it could be interpreted to include free public employment services which cannot be made liable.

Cyprus. This could be deleted if, under Article 8, alternative (a) is adopted. Otherwise, prefers alternative drafting suggested by the Office.

PEO. Agrees.

Czech Republic. Agrees with change suggested by the Office. (Qu. 1) New legislation would be required. (Qu. 2) There would be problems in implementation.

Estonia. Prefers present text. In principle, the problem should be solved by an agreement on the rights and obligations between the employer and the intermediary. There would be no need for special laws and regulations because the problem is not likely to arise.

Finland. Under Finnish legislation, there is no need for the concept of "intermediary" and the references to intermediaries could be deleted.

SAK. Agrees to new drafting suggested by the Office.

France. Agrees to revised drafting suggested by the Office. No new legal provisions would have to be adopted.

CFDT. Agrees fully to maintain this Paragraph with the new wording suggested by the Office.

Germany. This Paragraph should be deleted if intermediaries are no longer mentioned in the instruments. Unlimited joint liability should be rejected. It could only be considered where the principal knows, or should know, that the homeworker is not being properly remunerated. The amendment proposed by the Office would be unacceptable.

Greece. Agrees to the modification proposed by the Office. There is no problem with the application of this provision.

Hungary. To create a separate category of "home work intermediaries" and to establish rules to assign liability would require separate legislation — which is unreasonable. See also comments under Article 8 of the proposed Convention.

India. CITU. Agrees. Additional legislation, or legal principles assigning liability, would be reasonable, since, in their absence, workers are likely to suffer.

SEWA and Hind Mazdoor Sabha. Agree to alternative wording suggested by the Office.

Japan. Agrees to revision suggested by the Office.

Lebanon. Agrees to change suggested by the Office. The Government wonders why the liability should be limited to the payment of wages and why other costs incurred by the homeworker and resulting from incidents at work or occupational safety and health hazards are not covered. (Qu. 1) Legislation to determine the legal status and liability of the intermediaries would have to be drawn up. (Qu. 2) Provided the concepts are made clear in national laws, no problems should appear in implementing these laws.

Netherlands. Introducing joint liability for payment of remuneration would imply major changes in labour legislation. There is no obvious need for such a provision.

New Zealand. NZEF. Because of the very broad interpretation of "intermediary", there are difficulties in making intermediaries liable for payments. Only the employer is liable for an employee's contractual and statutory entitlements.

NZCTU. Supports the amendment suggested by the Office for the sake of clarity and as an example of the distribution of responsibility that national laws should address in accordance with the amended Article 8 of the proposed Convention. However, the liability should be expanded to incorporate all sums due to homeworkers, such as reimbursement of expenses and payment of compensation.

Nicaragua. Agrees to the modification suggested. (Qu. 1) Yes, new legislation would be required. (Qu. 2) There would be no problem in implementation.

Norway. LO. Supports the amendment suggested by the Office.

Philippines. Under national legislation, the employer is liable with the contractor and subcontractor in case the latter fails to pay the homeworker the salary due.

Portugal. The suggested change consolidates the guarantees for the worker. (Qu. 1) It would have to be legally imposed. (Qu. 2) The imposition would cause political problems. Given the strong opposition from employers, the joint responsibility would be particularly difficult to accept in cases where the intermediary is an employee of the employer and fulfils this function in compliance with his employment contract.

CIP. Delete this Paragraph.

UGT. Insert after "remuneration", "and other financial benefits".

Slovakia. New legislation to regulate the position, rights, duties and responsibilities of intermediaries would have to be created.

Spain. Agrees to the new drafting suggested by the Office, although it does not appear to change anything. (Qu. 1) In Spain, the joint responsibility is already established and regulated, so that this provision does not pose any problems.

Sweden. TCO. Agrees to retaining this provision as redrafted by the Office.

Switzerland. New provisions would have to be adopted, because joint liability for the payment of remuneration is not compatible with Swiss contract law. Applying this provision in practice would meet with many problems. The employer must remain responsible until the homeworker has been paid, even if he has advanced the amount to an intermediary. If the Paragraph is retained, the alternative text suggested by the Office is preferable.

VSA. Agrees to the alternative text suggested by the Office.

Syrian Arab Republic. Chamber of Industry. Opposed. In the Syrian Arab Republic, the placement and employment services of the Ministry of Labour act as intermediaries, and this provision would make such services liable for unpaid wages. This is not the case for any other category of worker, and would go beyond the means of the public treasury.

Thailand. (Qu. 1) New legislation concerning this provision is expected to be taken into consideration.

Trinidad and Tobago. ECA. Governments would have difficulty implementing such legislation for various reasons: employers would not want additional legislation making them liable, intermediaries would want employers to be fully accountable and it would be difficult at times to establish who is at fault.

Tunisia. Agrees to alternative drafting suggested by the Office.

United Kingdom. TUC. If the alternative text of Article 8 is accepted, this Paragraph should be retained as a specific and most important example of the kinds of responsibilities of intermediaries. Supports new wording suggested by the Office, as joint and several liability is essential.

United States. Supports new drafting suggested by the Office. United States legislation assigns liability in such a manner.

USCIB. This is a domestic legal matter that should not be subject to international regulation.

UNITE. American law recognizes the joint responsibility of employers and intermediaries in the garment industry.

Zimbabwe. National laws do take care of issues of non-payment of wages, and the same provisions should apply in the case of homeworkers.

Office commentary

This Paragraph, read in conjunction with Article 8 of the proposed Convention which requires member States to determine the conditions under which the employer may use intermediaries and the responsibilities of employers and intermediaries toward homeworkers, provides an example of how homeworkers can be protected when intermediaries are involved by making them liable with the employer for payment of remuneration. In Report IV (1), the Office invited comments on rephrasing the Paragraph as follows: "The intermediary, if any, should be made jointly and severally liable with the employer for payment of the remuneration due to homeworkers, in accordance with national law and practice".

A very large majority of governments and workers' organizations commenting on this Paragraph favour the alternative drafting. A few would like the liability of intermediaries to extend beyond the payment of remuneration to include other sums due to homeworkers. A few governments and employers' organizations oppose the inclusion of the Paragraph or proposed amendments.

During the Conference Committee's first discussion, the Office was asked to put two questions to member States: "(1) would the provision in Paragraph 19 require the addition of new legislation or are there already laws or legal principles which assign liability in such a manner;" and "(2) would governments have problems in implementing such a provision?" The answers to the first question are split, with almost as many replying in the affirmative as in the negative. However, a far greater number of governments reply that they do not foresee problems in implementation, and in some cases, even if new legislation has to be adopted.

Considering the strong support for the alternative drafting proposed by the Office and the discussion under Article 8, the Office has made some editorial changes to bring this Paragraph into line with the new wording of Article 8. It now reads: "Where an intermediary is used, the intermediary and the employer should be made jointly and severally liable for payment of the remuneration due to homeworkers". The end of the sentence "in accordance with national law and practice", has been deleted because of the ambiguity as to whether it refers to the fixing of the liability or the means by which the liability is established. If there is a strong feeling that the phrase should be reintroduced, it should refer to the latter. It is only in countries where no intermediaries are used, where their use is prohibited in home work, or where such liability already

exists, that no action need be taken. Furthermore, the word "liable" is a legal term meaning the responsibility will be established or enforceable by national law.

VII. Occupational safety and health

20. The competent authority should ensure the dissemination of guidelines concerning the safety and health precautions that should be observed by employers and homeworkers.

Observations on Paragraph 20

Australia. ACTU. Agrees.

Canada. Agrees.

Japan. ZENROREN. This provision should be included in the proposed Convention.

Portugal. UGT. After "ensure", insert "in consultation with the organizations of employers and homeworkers". Add at the end of the Paragraph the following: "in order to ensure the same level of safety and health which is ensured to workers in similar situations in the enterprise".

Switzerland. Swissfashion. Paragraphs 20 to 23. These provisions should not extend beyond what is required under Swiss law.

CP. These provisions are evident in socially advanced countries, but would be difficult to apply at the international level. The text should be more condensed.

Office commentary

The text is submitted unchanged.

21. Employers should be required to:

(a) inform homeworkers of any hazards associated with the work given to them and of the precautions to be taken, and provide them, where appropriate, with the necessary training;

(b) ensure that machinery, tools or other equipment provided to homeworkers are equipped with appropriate safety devices and properly maintained; and

(c) provide homeworkers free of charge with any necessary personal protective equipment.

Observations on Paragraph 21

Australia. ACTU. Agrees.

Austria. Clause (b): The principal would need to have regular access to the homeworker's residence in order to check the condition of the equipment. However, it would be feasible that homeworkers report any faults to the principal, and that the

principal bears financial responsibility for cleaning and maintaining machines, tools and other equipment.

WKÖ. Paragraphs 21 to 23: Neither the employer nor the labour inspector has the right to enter the homeworker's private residence.

Canada. Agrees.

France. CNPF. Clause (b): The employer has no direct means of knowing whether the machinery, tools and other equipment are properly maintained when they are at the home of the worker, nor whether the safety devices are used properly.

CFDT. Add a new clause, as follows: "(d) inform homeworkers of their rights with regard to compensation for work accidents and occupational diseases".

Germany. BDA. Agrees in principle, but the details of the measures go too far. The requirement to provide protection against hazards must end at the limit of the employer's sphere of influence. Clause (b) exceeds that limit. Once the machines and tools are set up on the premises of the homeworker, the responsibility should be transferred to the homeworker or to the authority entrusted by national law to carry out inspections. After "Employers should be required," insert "in accordance with national legislation and practice". Delete "and properly maintained".

India. CITU. Agrees. Homeworkers must be made aware about safety measures, and the role of trade unions is important in this regard.

Japan. ZENROREN. This provision should be included in the proposed Convention.

New Zealand. NZEF. The employer has to ensure that proper protective measures are available. See also comments on Article 9 of the proposed Convention.

Portugal. CIP. Clause (c): Completely opposed to providing such equipment free of charge. The possibility that the homeworker could acquire such equipment should be introduced.

UGT. Insert a new clause before (a), as follows: "take care that the homeworker or the method of work used by the homeworker does not endanger the safety and health of him/herself, his/her family and the environment;". Clause (b): Replace "provided to" by "used by". Add a new clause, as follows: "provide homeworkers with a list of dangerous or prohibited substances and products, as well as instructions on how to use them".

Office commentary

The text is submitted unchanged.

22. Homeworkers should be required to:

(a) comply with prescribed safety and health measures;

(b) take reasonable care for their own safety and health and that of other persons who may be affected by their acts or omissions at work, including the proper use of materials, machinery, tools and other equipment placed at their disposal.

Observations on Paragraph 22

Australia. Agrees.

Austria. No indication is given concerning possible consequences for homeworkers if they fail to comply with these responsibilities, as well as the impact this could have on the employers' compliance with their responsibilities.

Bahamas. Agrees.

Brazil. It is not indicated by what means the conduct of homeworkers, who are known to be dispersed and "invisible", will be checked. It presents practical and operational difficulties, and no penalties are foreseen. Replace the first sentence by: "Homeworkers should be encouraged by all convenient means to:".

Canada. Agrees.

Cyprus. Agrees. Insert "substances" after "materials".
PEO. Agrees.

Estonia. Prefers the term "facilities and equipment".

Greece. Agrees.

Japan. JTUC-RENGO. Agrees.

Lebanon. Agrees.

New Zealand. Agrees.
NZEF. Primary responsibility lies with the employer.

Nicaragua. Agrees.

Portugal. Agrees.

Switzerland. VSA. Agrees.

Trinidad and Tobago. ECA. Agrees.

Tunisia. Agrees.

Office commentary

The text is submitted unchanged.

23. (1) In the event of an imminent danger to the safety or health of a homeworker, his or her family or the public, as determined by a labour inspector or other official entrusted with enforcing provisions applicable to home work, the continuation of home work should be prohibited until appropriate measures have been taken to remedy the situation.

(2) A homeworker who refuses to carry out work which he or she has reasonable justification to believe presents an imminent and serious danger to his or her life or health should be protected from undue consequences in accordance with national conditions and practice. The homeworker should report the situation, in the first instance, to the employer.

Observations on Paragraph 23

Australia. Subparagraph (2): Agrees to "in a manner consistent with national conditions and practice".

ACCI. Agrees to suggested deletion of reference to national law and practice, if subparagraphs (1) and (2) could be linked, by inserting at the beginning of subparagraph (2) "Where a determination has been made by a labour inspector or other official subject to subparagraph (1) above,".

Austria. Subparagraph (2): Delete "in accordance with national conditions and practice".

BAK. This passage can be deleted as it is already clear that the specific protective measures are to be established through national legislation.

Bahamas. Subparagraph (2): The term "in a manner consistent with national conditions and practice" is acceptable.

Brazil. Subparagraph (2): The deletion of "in accordance with national conditions and practice" does not affect the understanding of the subparagraph.

CNI. Agrees to alternative drafting suggested by the Office.

Canada. Subparagraph (1): Agrees. Subparagraph (2): Add at the end "or to the local authority if the employer is not immediately available".

Cyprus. Subparagraph (2): Agrees to "in a manner consistent with national conditions and practice".

Estonia. Agrees.

Finland. Subparagraph (2): The phrase "in accordance with national conditions and practice" is unnecessary.

Germany. Subparagraph (2): This goes too far if the question of whether work can be justifiably refused is left to the subjective appreciation of the homeworker. Opposes amendment suggested by the Office.

BDA. Subparagraph (1): Replace "the continuation of work should be prohibited" by "it should be possible to prohibit the continuation of home work". Subparagraph (2): Delete "he or she has reasonable reason to believe".

Greece. Agrees with the Office.

Hungary. In this Paragraph, it would be appropriate to refer to Article 9 of the proposed Convention.

Japan. JTUC-RENGO. No objection to change suggested by the Office.

Lebanon. Agrees to "in a manner consistent with national conditions and practice".

New Zealand. Homeworkers should be entitled to the same health and safety protection as other workers.

Nicaragua. Subparagraph (2): Agrees to deleting "in accordance with national conditions and practice".

Portugal. Subparagraph (2): Agrees to "in a manner consistent with national conditions and practice".

CIP. Considering the seriousness of these matters, they should be left to the courts.

Spain. Agrees to drafting change suggested by the Office.

Switzerland. VSA. Agrees.

Thailand. Agrees to "in a manner consistent with national conditions and practice".

Trinidad and Tobago. ECA. Agrees.

Tunisia. Agrees to "in a manner consistent with national conditions and practice".

United States. Supports phrase "in a manner consistent with national conditions and practice".

UNITE. Agrees with the Office.

Office commentary

In Report IV (1) the Office drew attention to the ambiguity in subparagraph (2) of the phrase "in accordance with national conditions and practice", which could create the impression that the protection against undue consequences should only apply if it was in line with national conditions and practice. The Office suggested either deleting this phrase or replacing it with the phrase "in a manner consistent with national conditions and practice". Most of the replies agreed with the Office, with a large number in favour of the alternative phrase rather than deletion. This change has been introduced.

The text of this Paragraph has been modified further in the following ways: First, the Office suggests that it is more logical to invert the order of the subparagraphs to speak first of situations a worker believes are dangerous and then of situations where action by an outside authority is required. Thus subparagraph (2) becomes subparagraph (1). Secondly, the Office has made a change to make both subparagraphs refer to "imminent and serious danger to the safety or health" of a homeworker. This is in line with the Chemicals Convention, 1990 (No. 170), which is the most recent Convention containing a similar provision. Finally, the reference to an "official entrusted with enforcing provisions applicable to home work" has been replaced by "public safety official". If a danger is imminent, there might not be time to call a labour inspector or other official responsible for home work. A public safety official might be closer at hand or readily available to determine the imminence and seriousness of danger to the safety or health of homeworkers, their families or the public.

VIII. Hours of work, rest periods and leave

24. A deadline to complete a work assignment should not deprive a homeworker of the possibility to have daily and weekly rest comparable to that enjoyed by other workers.

Observations on Paragraph 24

Australia. ACTU. Agrees.

Barbados. BEC. This should be left to individual contracts.

Canada. Agrees.

Czech Republic. Provisions of the Labour Code on the weekly hours of work are applicable to homeworkers, and an employer may only allocate the amount of work which corresponds to the standard working week. Thus a homeworker is not deprived of the right to have daily and weekly rest comparable to that enjoyed by other workers.

Germany. This makes little sense. Homeworkers are free to organize their working time and can decide how many and how frequently they accept assignments. It is not possible to supervise their working hours.

Hungary. Home work is a flexible form of employment with special features, e.g. the employer is not obliged to employ anyone and the person concerned is not obliged to accept work. For those who only occasionally work at home, it is not reasonable to apply provisions concerning hours of work.

Japan. NIKKEIREN. Delete this Paragraph. A homeworker works voluntarily under a free contract with a contractor and is different from an employee.

ZENROREN. This provision should be included in the proposed Convention.

New Zealand. This is a matter for negotiation between workers and employers.

Portugal. CIP. Delete this Paragraph. Deadlines should be decided between the homeworker and the employer.

Switzerland. Swissfashion. Paragraphs 24 and 25: These provisions should not extend beyond what is required under Swiss law.

CP. Agrees with some reservation. Workers in the enterprise sometimes have to work overtime or work on Saturday or Sunday. Is it justified to avoid this type of temporary overtime in the case of homeworkers?

Office commentary

Only a few comments on the substance of this provision have been made. The text is submitted unchanged.

25. National laws and regulations should establish the conditions under which homeworkers should be entitled to benefit, as other workers, from paid public holidays, annual holidays with pay and paid sick leave.

Observations on Paragraph 25

Australia. ACTU. Agrees.

Barbados. BEC. This would be impractical for persons working at home without supervision and flexible working arrangements.

Canada. Agrees.

Czech Republic. Delete "paid public holidays", considering that since the employer does not fix the schedule of working hours for homeworkers, it is impossible to determine which days are their normal working days.

France. CNPF. The reference to sick leave should be in a separate paragraph, as follows: "homeworkers should benefit from a system of compensation for absences due to sickness or an accident".

Germany. BDA. As social security provisions vary greatly depending on the situation in the country, suggests replacing this Paragraph by: "Homeworkers should be entitled to paid public holidays, annual holidays with pay and paid sick leave in accordance with national legislation and practice".

Japan. NIKKEIREN. Delete this Paragraph. A homeworker is different from an employee.

ZENROREN. This provision should be included in the proposed Convention.

Lebanon. The Government wonders about other types of leave, such as that granted on the occasion of a death in the family, marriage or childbirth?

New Zealand. NZEF. Employees engaged in home work have the same leave entitlements as other employees.

Portugal. CIP. Work carried out in the home does not justify this type of provision.

UGT. Replace by the following: "Homeworkers should enjoy the same rights as workers in the same situation or in a comparable situation in the enterprise with regard to paid public holidays, annual holidays with pay and paid sick leave".

Office commentary

Several suggestions for amendments to this Paragraph have been made, some of which were already raised and dispensed with during the first discussion. The text is submitted unchanged.

IX. Social security and maternity protection

26. Homeworkers should benefit from social security protection. This could be done by:

(a) extending existing social security provisions to homeworkers;
(b) adapting social security schemes to cover homeworkers; or
(c) developing special schemes or funds for homeworkers.

Observations on Paragraph 26

Australia. ACTU. Agrees.

Canada. Agrees.

Czech Republic. Reconsider the need to include this provision in the Recommendation and retain only the provision with a view to extending existing statutory or supplementary social security schemes to cover homeworkers. In the Czech Republic, statutory social security schemes and maternity protection systems do not discriminate against homeworkers. Homeworkers participate in both universal sickness and pension insurance schemes and are entitled to the benefits.

Germany. Clause (c): This provision must not be interpreted to mean that a more extensive scheme or fund to cover unemployment insurance for homeworkers has to be developed.

India. CITU. Homeworkers need to be registered in their own name, otherwise they will not benefit.

SEWA. Social security, including health care, is very much needed by homeworkers, perhaps more so than by workers in the formal sector. This provision is important enough to be transferred to the Convention.

Japan. Delete clauses (a)-(c). While it is important for the homeworker to benefit from social security protection, it is appropriate to let each member State judge how this will be provided.

ZENROREN. This provision should be included in the proposed Convention.

Lebanon. To the extent that homeworkers are considered as other workers, they should be covered by social security protection, in one way or another.

New Zealand. NZEF. Social security is available to all employees, who fulfil the relevant criteria.

Portugal. UGT. Restructure as follows: "Social security systems should be adapted so as to cover homeworkers. When such systems do not exist or are not applied, special funds or systems for homeworkers should be created in accordance with national law and practice".

Switzerland. CP. This is already the case in Switzerland, but is it realistic at the international level?

Office commentary

The text is submitted unchanged.

27. National laws and regulations in the field of maternity protection should be applicable to homeworkers.

Observations on Paragraph 27

Australia. ACTU. Agrees.

Barbados. BEC. It would be difficult to determine the employment status of the person concerned.

Canada. Agrees.

Japan. ZENROREN. This provision should be included in the proposed Convention.

Lebanon. Add "to the extent fixed by these laws and regulations" at the end of the Paragraph.

New Zealand. NZEF. Maternity protection is available to all employees who fulfil the relevant criteria.

Switzerland. CP. Delete this Paragraph. Home work is not incompatible with taking care of children.

Office commentary

A minor editorial change has been made to replace the words "be applicable to" by "should apply to".

X. Protection in case of termination of employment

28. Homeworkers should benefit from the same protection as that provided to other workers with respect to termination of employment.

Observations on Paragraph 28

Australia. ACTU. Agrees.

Austria. WKÖ. Opposed. The homework relationship is not a regular working relationship and should not be subject to a period of notice. Conditions for terminating the home work contract cannot be compared to periods of notice given to workers in an enterprise.

Canada. Agrees.

Germany. Add at the end of the Paragraph: "and to the terms of notice to be observed by the employer".

BDA. In favour of this type of protection against dismissal, provided the provision is made clearer concerning the comparison with other workers.

Hungary. For those who only occasionally work at home, it is not reasonable to apply provisions concerning protection in respect of termination of employment.

Japan. Replace "the same protection as that provided to other workers" by "protection in accordance with the national laws and regulations". It is difficult for homeworkers, who do not have the status of employees, to benefit from the same protection as other workers in this respect, as it is a general principle that the content and volume of work performed by homeworkers depend on the contract with the employer.

ZENROKEN. This provision should be included in the proposed Convention.

Lebanon. Agrees.

New Zealand. Agrees.

Portugal. CIP. Opposes including such a provision, which should be left to national law and practice.

UGT. Restructure this Paragraph as follows: "Homeworkers should, with regard to termination of employment, benefit from the same protection as workers in the enterprise who do the same or similar work".

Switzerland. ASM and CP. Delete this Paragraph. The employer must be allowed to interrupt home work rapidly without having to give long periods of notice. This is the price that has to be paid for home work on a large scale.

Office commentary

Contrasting views were expressed on the suitability of this provision because in some countries homeworkers have employee status, while in others they have a separate status. The text is submitted unchanged.

XI. Resolution of disputes

29. The competent authority should ensure that there are mechanisms for the resolution of disputes between a homeworker and an employer or an intermediary used by the employer.

Observations on Paragraph 29

Australia. ACTU. Agrees.

Canada. Agrees.

Japan. ZENROREN. This provision should be included in the proposed Convention.

Lebanon. Delete "or an intermediary" or insert "if any" immediately thereafter.

New Zealand. NZEF. Homeworkers should have access to the same disputes procedures as other employees.

Portugal. CIP. This should be reserved for national law and practice.

UGT. After "ensure", insert "after consultation with the organizations of workers"; insert "appropriate" before "mechanisms"; and add at the end of the Paragraph: "Homeworkers should be informed of the existence of these mechanisms and how they function".

Switzerland. ASM and CP. Delete this Paragraph. Normal legal procedures should be sufficient.

Office commentary

Given the earlier discussion on intermediaries and the possibility that an employer might not be authorized to use an intermediary, the word "an" has been replaced by "any" to refer to intermediary.

XII. Programmes to assist homeworkers

30. Each Member should promote and support programmes which:

(a) raise awareness of home-work-related issues among employers' and workers' organizations, other non-governmental organizations and the public at large;

(b) inform homeworkers of their rights and the kinds of assistance available to them;

(c) facilitate the organization of homeworkers in organizations of their own choosing;

(d) provide training to improve homeworkers' skills and expand their employment opportunities and income-earning capacity;

(e) increase and improve homeworkers' access to equipment, tools, raw materials and other essential materials that are safe and of good quality;

(f) facilitate the creation of centres and networks for homeworkers in order to provide them with information and services and reduce their isolation; and

(g) provide developmental and technical assistance in order to improve the safety, health and productivity of homeworkers.

Observations on Paragraph 30

Australia. Clause (g) should be retained, given the importance of occupational health and safety issues for homeworkers, their employers and possible intermediaries.

ACCI. This clause should be maintained, perhaps with some minor changes in the wording.

ACTU. Developmental and technical assistance should be provided by the government to organizations and homeworkers, including through governments placing requirements on employers of homeworkers. Assistance may take many forms and should not be limited to aid from other governments and to items listed under (d), (e) and (f).

Austria. Delete clause (g) or at least the word "productivity".

BAK. Clause (g) seems to be directed at employers. It would seem ironical to aim to increase the productivity of homeworkers when their productivity is already about 15 per cent higher than that of workers in the enterprise. It would amount to a declaration of further exploitation. If retained, the reference to productivity should be deleted.

Bahamas. Clause (g) is meant to insure that homeworkers are not left out of government planning and programmes for the general development and technical advancement of all the people. How, through whom, and with what resources is not a consideration here. The commitment is the important factor.

Brazil. Clause (g) could be incorporated into clause (d), as follows: "provide training and technical assistance to improve homeworkers' skills, expand their

employment opportunities, increase their income-earning capacity and improve the conditions of health and safety at work".

CNI. Although some special rules might be necessary, in general the same provisions should apply to homeworkers as to all other workers and more favourable treatment should be avoided. Delete clause (g) for the reasons indicated by the Office.

Canada. Delete clause (g).

PSAC. Retain clause (g). It is clear that this support is to be provided to homeworkers.

UNITE. Retain clause (g). It is complementary to clauses (d), (e) and (f).

Cyprus. Clause (g) could be deleted.

PEO. Retain clause (g) or incorporate into clause (d).

Estonia. Retain clause (g). It is understood that technical assistance, in any form, is provided to both employers and homeworkers. No further specifications are required.

Finland. SAK. It is unclear what obligations this provision creates and for whom.

France. This point is ambiguous and should be taken up again in Committee.

CNPF. Clause (g): The present text is satisfactory and there is no reason to delete it.

Germany. Delete clause (g).

DGB. Clause (g): After "technical assistance", insert "at the national and international levels".

Greece. Prefers deleting clause (g) in view of clauses (d), (e) and (f).

Hungary. This Paragraph is unnecessary.

India. CITU. Such programmes can help home-based workers if carried out conscientiously.

SEWA and Hind Mazdoor Sabha. Retain clause (g), as it is important for employment enhancement. In the informal sector, it is not enough to provide protection to homeworkers. One of the main problems faced by homeworkers is their intermittent employment at low-skill levels. Programmes to assist homeworkers should promote their employment and also include access to credit and housing facilities. It would greatly enhance the effectiveness of the instruments if this provision was transferred to the Convention.

Japan. JTUC-RENGO. It should be made clear that the development and technical assistance is for the homeworker.

ZENROREN. This should be prescribed in the form of general provisions in a Convention.

Lebanon. Delete clause (c), as the right to organize is guaranteed by the legal texts in force and is exercised accordingly. Clause (e): Insert "machinery" before "tools" in line with Paragraph 21. Delete clause (g) because this provision is included in other clauses and because of its ambiguity as to who is to provide this assistance.

Netherlands. Clause (g) is superfluous in view of clauses (d), (e) and (f). At the time of discussion, it was not assumed that this dealt with international assistance.

New Zealand. NZEF. Individual governments are in a position to know what, if any, action is required.

Nicaragua. This provision is unnecessary.

Portugal. Accepts deleting clause (g), which is vague; its intent is already reflected in clauses (d), (e) and (f).

CIP. Programmes promoting the organization of homeworkers may be seen as outdated and patronizing.

UGT. Insert two new clauses after clause (d), as follows: "prevent or correct possible negative effects resulting from changes in production or new technologies on employment opportunities of homeworkers"; "facilitate the access of homeworkers to equipment, tools, raw materials and other indispensable materials which are safe and of good quality".

Spain. The present text is sufficiently clear and expressive in the sense that it is national governments who are responsible for providing, through programmes which they promote or support, technical assistance directly or through their organizations. Clause (g) should be retained.

Switzerland. Swissfashion. Agrees with reservations expressed previously.

CP. Delete Paragraph 30, as it can lead to an excessive increase in legislation and public service staff.

UCAPS. Reduce this Paragraph to a minimum.

VSA. Replace clause (g) by "to improve the safety, health and productivity of homeworkers".

Thailand. Retain clause (g). The developmental and technical assistance should be provided to all concerned: homeworkers, intermediaries and employers. International cooperation for governments and non-governmental organizations should be foreseen and taken into account.

Trinidad and Tobago. ECA. Clause (g) is not necessary, as it merely reiterates the content of clauses (d), (e) and (f).

Tunisia. Clause (g) is useful, but its content could be more precise.

United Kingdom. TUC. Clause (g) should be retained. It is intended to encourage member States to provide advice and assistance to employers. Public policy has a central role to play in encouraging best practice in this way.

United States. Supports deleting clause (g) for the reasons stated by the Office.

Zimbabwe. Clause (g) is not necessary in view of clauses (d), (e) and (f).

Office commentary

Because it was unclear how clause (g), which had been added by the Conference Committee without discussion, was to be read, the Office raised several questions. To whom was the developmental and technical assistance to be provided, by whom and in

what form? Member States were invited to comment on whether this provision was necessary, especially in view of clauses (d), (e) and (f). The replies illustrate the different interpretations that might be given to this clause. Some indicate that it is clear that the assistance should be provided to homeworkers, but several others believe that it is also directed at employers or even intermediaries. Views also differ as to who should provide the assistance — both governments and employers are mentioned, as well as technical assistance from the international level. While some agree that the clause is unclear, others feel that it is not really necessary to be more precise; what matters is the commitment.

In reply to the question whether clause (g) should be deleted, slightly more than half of the governments and a few employers' organizations prefer to delete it. But there aree many other governments and workers' organizations, as well as a few employers' organizations, who want clause (g) to be retained as adopted.

Following the suggestion of some governments to delete clause (g) and incorporate its substance into other clauses, the Office has made the following editorial changes: (1) the idea of enhancing productivity has been added to clause (d), which now reads "provide training to improve homeworkers' skills, productivity, employment opportunities and income-earning capacity"; and (2) the improvement of safety and health has been added to clause (e) which now reads "improve homeworkers' safety and health such as by facilitating their access to equipment, tools, raw materials and other essential materials that are safe and of good quality".

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